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SOLICITORS' JOURNAL

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CURRENT TOPICS

Republican Ramifications

THE complexity of the legal arrangements which must be made consequent upon the Union of South Africa becoming a Republic outside the Commonwealth on 31st May was illustrated by the SECRETARY OF STATE FOR COMMONWEALTH RELATIONS in the Commons on 24th April. Mr. Duncan Sandys was speaking on the second reading of the Republic of South Africa (Temporary Provisions) Bill, a standstill measure designed to ensure that all Acts which would otherwise cease to apply to South Africa will continue to apply to that country for a period of not more than one year after 31st May. Provisions relating to South Africa so saved for the time include lawyers' law to be found in the Colonial Probates Act, 1892, providing for the recognition in the United Kingdom of probate and letters of administration granted in South Africa; the Maintenance Orders (Facilities for Enforcement) Act, 1920, enabling maintenance orders made in either this country or South Africa to be enforced in the other; the Solicitors Act, 1957, conferring advantages on South African solicitors who wish to be admitted in England; the Evidence by Commission Act, 1859, providing for taking evidence in proceedings pending before tribunals in Her Majesty's Dominions in places out of the jurisdiction of such tribunals; and the Colonial Marriages Act, 1865, passed to remove doubts respecting the validity of certain marriages contracted in Her Majesty's possessions abroad. On a broader canvas are the Merchant Shipping Act, 1894, relevant to the interchange of competency certificates issued in the two countries to masters, mates or engineers on board ship and defining what may be called a British ship; such statutes as the Medical Act, 1956, and the Dentists Act, 1957, which distinguish between professional qualifications obtained in Commonwealth countries and those obtained in foreign countries; and the Companies Act, 1948, containing provisions as to branch registers of Dominion companies kept in the United Kingdom. The British Nationality Acts, 1948 and 1958, do not fall within the scope of the new Bill, although Mr. Sandys indicated that alterations would be made in the rights in respect of British nationality at present enjoyed by South African citizens. A similar standstill measure is to be presented to the South African Parliament. The participation of South Africa in the sterling area and the bilateral trade and defence agreements between the two countries will not automatically be affected by the constitutional change, although as a result various aspects of them may be reviewed.

Company Law in Ghana

ON 28th April last the Government of Ghana published the Final Report of its Commission of Inquiry into the working

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and administration of company law in Ghana. The Commission consisted of one member, Professor L. C. B. GOWER of London University. His report will be of especial interest to lawyers in Great Britain as he is also a member of the Jenkins Committee, which is at present inquiring into the working of company law in this country. A review of Professor Gower's report will be published in a later issue of this journal. For the moment, therefore, it will suffice to indicate the three dominant features of his recommendations, which take the practical form of two draft statutes. In the first place Professor Gower has attempted in the longer of these two drafts, the Companies Code Bill, to codify the whole of company law for Ghana instead of merely laying down rules to supplement the rules of common law and equity enunciated by the courts of this country, as does our own Companies Act. This does not mean that judicial decision will have no part to play in elaborating Ghanaian company law; it does mean, however, that the Ghanaian courts will start with a clean slate, and will not constantly have to refer to English precedents to give life to their own Companies Act. Secondly, Professor Gower has drafted an Incorporated Private Partnerships Bill under which small firms, which abound in the retail field in Ghana, may be incorporated without limited liability. The purpose of this Bill is to enable small traders to escape the harassments of our partnership law when one partner dies, retires or becomes bankrupt, yet at the same time to leave the partners personally liable for the firm's debts. Finally, as Professor Gower states in his introductory remarks, his recommendations are intended to be "tough" and to exact in return for the privilege of incorporation a higher standard of disclosure by the company and of diligence by its directors than our law demands at present. It is here that one may discern an augury for the form of our own next Companies Act.

Betting Offices and Schools

MANY people have been anxious about the possible effect upon children and young persons of the opening of betting offices, and at Lincoln the local education authority recently objected to the use of certain premises as a betting office on the ground of the proximity of the premises to a secondary school. The objection was made as a matter of principle because the premises were visible to children while they were at school, but the objection was of no avail and the betting office licence was granted. Before a holder of a bookmaker's permit or a betting agency permit can use any premises as a betting office, he must obtain both planning permission under the Town and Country Planning Act, 1947, and a betting office licence under the Betting and Gaming Act, 1960. In the case in question it seems that the local planning authority had granted planning consent, but this fact did not mean that the licensing authority were compelled to accept the premises as suitable for the purpose of a betting office. However, the licensing authority did not feel able to hold that, "having regard to the lay-out, character, condition or location of the premises, they are not suitable for use as a licensed betting office" (Betting and Gaming Act, 1960, Sched. I, para. 20 (1) (*b*) (i)). While there have been reports which suggest that university students may find remunerative part-time employment in betting offices, there is little danger that the children of Lincoln will resort to the betting office opposite their school, as the Act of 1960 stipulates that no person who is apparently under the age of eighteen years, or who is known to any person connected with the licensee's business and present on the licensed premises to be under that age, shall be admitted to or allowed to remain on those premises (Sched. II, para. 2). It is also an offence to have any betting transaction with, receive or negotiate a bet through, or employ in a licensed betting office any person under the age of eighteen years (s. 7 (1)).

Pot-holes in Factories

IT is well established that a highway authority is not liable for injury resulting from its omission to keep the road in repair (see, e.g., *Thompson* v. *Mayor of Brighton* [1894] 1 Q.B. 332), but roadways in factories are in a different position. In a recent case at Birmingham Assizes, the plaintiff said that he was driving an electric truck along a roadway at night when it went into a pot-hole and, as a result, swerved towards a stationary lorry loaded with metal bars. The plaintiff was driven against the bars and he recovered damages in respect of the internal injuries which he received. Of course, had this accident occurred on a highway, the plaintiff would have been without a remedy, but, because it happened in the factory at which he was employed, his action succeeded. The defendants were under a common-law duty to take reasonable care for the safety of their servant (*Wilsons and Clyde Coal Co.* v. *English* [1938] A.C. 57) and, in appropriate cases, this common-law duty has been reinforced by ss. 25 and 26 of the Factories Act, 1937, as extended by ss. 4 and 5 of the Factories Act, 1959.

Slander of Teachers

IN a recent case in the High Court a headmistress recovered judgment in default of defence against one of the managers of the school who, in front of a class, had falsely alleged that she was, *inter alia*, "a thieving liar." The woman was awarded damages of £750 and it seems that such a slander would now be actionable *per se*. At common law, it may be doubted whether the words would have been so actionable, as in *Jones* v. *Jones* [1916] 2 A.C. 481, the defendant alleged that the plaintiff, a headmaster, had committed adultery with a school-cleaner and the House of Lords held that this allegation was not actionable without proof of actual damage, as the imputation of adultery was not obviously directed to the plaintiff's reputation as a schoolmaster. However, the effect of this common-law rule has been largely nullified by s. 2 of the Defamation Act, 1952, which provides that it is not necessary to prove special damage if the slander is "calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him," whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

Natural Love and Affection ?

ALTHOUGH cries of protest and emotional outbursts in support of the prisoner are not uncommon in criminal courts when sentence is pronounced, there was an unusual disturbance in a recent case at Sheffield when a lorry driver was sentenced to six months' imprisonment. A woman rose from her seat and applauded, but this action does not defy explanation. The woman was the prisoner's mother-in-law!

KNOW-HOW AND TAXATION

In *Inland Revenue Commissioners* v. *Rolls Royce, Ltd.*, p. 404, *post*, the Court of Appeal overruled Pennycuick. J., who, following *Moriarty* v. *Evans Medical Supplies, Ltd.* [1958] 1 W.L.R. 66, held that lump sum payments received by the respondents in return for the supply of drawings and information necessary to enable certain governments and companies to manufacture specified types of aircraft engines were not taxable; each payment being the price of a capital asset comprising the value of the technical knowledge lost by its communication to others. Before examining this latest case it will be helpful to consider the analogy which "know-how" (as it is called) bears to patents and copyright, as well as the judgments of the House of Lords in the *Evans Medical Supplies* case, where the primary facts (but not the number of transactions involved or the conclusions drawn by the Commissioners) were very similar to those in the *Rolls Royce* case.

It will be seen from the decided cases that patent rights, copyright and royalties, being saleable assets for valuable consideration, have long occupied an assured place in the income tax code. The knowledge of secret formulæ, of newly developed techniques or of little-known processes of manufacture, storage or packaging is of more recent origin as a saleable asset, but is slowly finding its own place in the same code. It, too, is something which only the owner of it can use unless he sells it outright or disposes of it in a limited way by licence. "Secret knowledge," said Romer, L.J., in *Handley Page* v. *Butterworth* (*Inspector of Taxes*) (1935), 19 T.C. 328, "is as much (the taxpayer's) capital asset as is the patent monopoly the capital asset of the patentee." But whereas patents and copyright are monopolies in law, secret knowledge which is not, or cannot be, patented, is only a quasi-monopoly, or monopoly in fact.

Turning a monopoly to account

The owner of a patent or the possessor of a secret process can derive income from it by using his knowledge himself, or he can grant to another a licence to use it in return for a royalty. Alternatively, he can sell his patent or his knowledge outright, so that he parts with the whole of his capital asset. Instead of selling it *in toto*, he may sell to another the right to use his knowledge in respect of a particular territory, or he may sell outright only a part of his knowledge, in which case the value of the patent or process is—

> "permanently diminished or injuriously affected . . . (so that) the owner has, to that extent, realised part of the capital of his property as distinct from merely exploiting its income producing character"

(per Lord Greene, M.R., in *Withers* (*Inspector of Taxes*) v. *Nethersole* (1948), 28 T.C. 501). Again, certainly in the case of patents, he can sell only limited and non-exclusive rights, as in *Margerison* (*Inspector of Taxes*) v. *Tyresoles, Ltd.* (1942), 25 T.C. 59, and *Rustproof Metal Window Co., Ltd.* v. *Inland Revenue Commissioners* (1947), 29 T.C. 243.

When consideration taxable

Whether the consideration for the disposal of a monopoly or quasi-monopoly is taxable depends, as in the case of other assets, upon whether the sale is effected by the owner in the course of his business at the time of the agreement for sale; and, if the proceeds of sale are received in the course of trade, whether they are capital or income in the hands of the recipient. Whereas profits from the sale of fixed assets are receipts on capital account, profits from the sale of circulating capital are receipts on revenue account. Thus, in the case of an author or dramatist, whose brain is his fixed capital, the books or plays which he produces being his circulating capital (per Lawrence, J., in *Billam* v. *Griffith* (1941), 23 T.C. 757), not only profits from royalties and lump sums received in commutation of royalties, but also lump sum receipts from the outright sale of copyright are taxable, provided they form part of the receipts of the vocation. On the other hand, in *Withers* v. *Nethersole* the proceeds of sale of film rights in a play were treated as capital in the hands of a person not engaged in the trade or profession of dealing in such property, and so was the trustees' share of the profits of publishing a book based on Earl Haig's diaries in *Haig's Trustees* v. *Inland Revenue Commissioners* (1939), 22 T.C. 725.

Essentially, "know-how" is more analogous to patents than to copyright. Patents, however, but not copyright or "know-how," are subject to the provisions of s. 318 of the Income Tax Act, 1952 (formerly s. 37 of the Income Tax Act, 1945), which makes capital as well as income receipts derived from patent rights liable to income tax (subject to a provision for spreading), thus marking an innovation, since the fundamental principle has always been that income tax is a tax on income. In the case of "know-how" it may be a difficult question to decide whether knowledge of a particular process or other information falls within the ambit of a quasi-monopoly or whether the communication of it ranks as a service (see *Hobbs* v. *Hussey* (1942), 24 T.C. 153, and *Housden* (*Inspector of Taxes*) v. *Marshall* [1959] 1 W.L.R. 1, as to the distinction between copyright and the performance of services; and *Exchange Telegraph Co., Ltd.* v. *Gregory and Co.* [1896] 1 Q.B. 147, as to confidential information).

The *Evans* case

The taxpayer company, which carried on business as manufacturing chemists and wholesale druggists with a world-wide trade and an agency in Burma, entered into an agreement with the Burmese government whereby it undertook, under Pt. I of the agreement, to supply the Government with information as to secret processes relating to the manufacture, storage and packaging of pharmaceutical and other products; and also technical data, drawings, designs and plans for the erection of a factory and the installation of machinery suitable for the manufacture of such products in Burma. The secret processes had never before been disclosed to anyone, and during the currency of the agreement the company undertook not to disclose them to anyone else in Burma. The consideration payable to the company under this part of the agreement was a lump sum payment of £100,000, which was described as a "capital" payment, and was not divisible. Under Pt. II of the agreement the company, for an annual fee of not less than £25,000, was to operate and manage the factory, and whilst training native personnel was to provide the necessary staff.

The Special Commissioners held that the different parts of the agreement had to be read together as an agreement for services; that those services were provided by the company either in the course of its existing trade or in the course of a new trade which it commenced to carry on at the date of the agreement, and that the £100,000 was properly included in the company's profits for income tax purposes. Upjohn, J., reversed this decision. He held (i) that the £100,000 was not part of the profits or gains of the company's trade of

wholesale druggists and there was no evidence that the company was starting a trade of exploiting its secret processes by disclosing them to chosen instruments in foreign countries, and (ii) that the payment was a capital payment, as the company was parting for ever with secret information in order to enable a new and competing business to be set up in Burma. The Court of Appeal, on the other hand, while agreeing with the Commissioners that the payment was received by the company in the course of its trade, distinguished "formulae or secret processes truly analogous to letters patent, copyright and things of that kind" from "plans and designs" illustrating the way in which the company would lay out the factory in Burma and dispose the apparatus therein, which only represented the "recorded fruit of practical manufacturing or operational experience." It discharged the order of Upjohn, J., and ordered the case to be remitted to the Commissioners to apportion the amount and adjust the assessment accordingly.

Different opinions

In the House of Lords no fewer than four different opinions were given. Lord Morton agreed with the conclusion of the Court of Appeal. Lord Keith, influenced by a finding of fact by the Commissioners that in entering into the agreement the company had chosen the method of developing its business which seemed to its directors to be the best available in the circumstances, agreed with the determination of the Commissioners. Lord Denning distinguished between (i) the supply of know-how and (ii) the sale of goodwill or a secret process which imports that the seller cannot thereafter avail himself of the special knowledge with which he has parted: *Trego* v. *Hunt* [1896] A.C. 7. He said the £100,000 was income, being received for the supply of know-how over a period of years, but it was not established by the Commissioners whether such a sum was received in the course of the company's existing trade or in the course of a new activity of exploiting know-how. That was not good enough to enable the Inland Revenue to succeed in the case stated, since the law never gave judgment in favour of a plaintiff when the only finding was equally consistent with liability or non-liability. He also doubted whether it was permissible to divide up the £100,000 (as the Court of Appeal had done) into (*a*) information about secret processes, and (*b*) "information about other things," as the case had been argued throughout by both sides on an "all or nothing" basis, and the general rule of every appellate court was not to allow a new point to be raised except on a question of law which no evidence could alter: *Kates* v. *Jeffery* [1914] 3 K.B. 160; *London County Council* v. *Farren* [1956] 3 All E.R. 401.

Viscount Simonds and Lord Tucker (applying *Handley Page* v. *Butterworth*) were agreed that on the true construction of the agreement the payment of the £100,000 was solely referable to the promises given by the company under Pt. I of the agreement, and by disclosing secret processes in accordance with those promises the company was parting with a capital asset for which it was receiving a capital sum. It would pass the wit of man to apportion the £100,000 between the several items comprised in Pt. I of the agreement which were "clearly, less clearly or doubtfully of a capital nature," just as it would be difficult to separate the value of a secret imparted to the Burmese Government from the value of the service rendered in imparting it. Accordingly, the strange situation arose that, on a majority view, the whole of the £100,000 was excluded from the computation of the company's profits, notwithstanding that a majority of the House had also held that the lump sum payment, or some part of it (for Lord Morton had agreed with the division made by the Court of Appeal) was an income receipt.

The *Rolls Royce* case

It was, then, against a somewhat strange background that this latest case fell to be decided by Pennycuick, J. The company, for the purpose of its business as a manufacturer of motor cars and aircraft engines, had, for a number of years, been engaged in metallurgical research and the discovery and development of engineering techniques and secret processes. As a result it had acquired a fund of technical knowledge or know-how of which only a comparatively small part was capable of forming the subject-matter of patent rights. For some years the company, as a general rule, used its know-how only in its own trade, but during the period 1946 to 1953, as a result of overtures made to it by certain foreign governments and companies, it entered into a number of agreements whereby, in consideration of lump sum payments, it undertook to supply the foreign government or company with drawings and information necessary to enable it to manufacture specified types of aircraft engines. A specimen agreement, mentioned in the case, was one dated 13th February, 1946, with the Republic of China. Under that agreement the company licensed a Chinese commission to manufacture jet engines and undertook to supply drawings and technical information in consideration of a "capital sum" of £50,000 and royalties on the number of engines made. The company was to advise the commission from time to time of improvements and modifications in the manufacture of the engines as and when the British Government permitted it to do so, and the company was also to instruct Chinese personnel in the manufacture of the engines. The commission, on its part, was not to disclose the drawings and information to others and the constructed engines were to be used only in Chinese owned or operated aircraft.

The cases compared

There were, therefore, many factual similarities with the *Evans* case, as well as a few differences. In each case (i) the taxpayer company had acquired over the years a fund of technical knowledge of which only a comparatively small part was capable of forming the subject-matter of letters patent, (ii) the first approach was made *to* the taxpayer, and not *by* the taxpayer, (iii) there was a lump sum payment described as "capital," with no attempt to divide or allocate the payment as between secret processes and other information, and (iv) there were further payments for services or by way of royalties. On the other hand, in the *Rolls Royce* case, (*a*) there was no evidence that the company was trading in the territories of the licensees at the date of the agreements, (*b*) there was a number of communications of know-how as opposed to a single communication, (*c*) the lump sum was paid in three instalments, (*d*) there was no division of the agreement into parts, with the allocation of the lump sum to any particular part, (*e*) there was no alternative finding by the Commissioners that the company was carrying on a new trade, and (*f*) the Commissioners held the payment to be capital, and not income.

Pennycuick, J., said that the know-how (an expression which the Commissioners, unlike Lord Denning, used as covering secret processes) represented in great part a capital asset which it was open to the company to exploit by using it in its own trade or by communicating it to others, and that in the latter case the taxable character of the consideration depended on the particular circumstances. In the circumstances of the present case the nature of the transactions

represented by the agreements was that the company had communicated the asset to another with the consequence that, as regards the territory of that party, the asset had lost the whole or the greater part of its value. Such a transaction was not the less a disposition of part of a capital asset by reason of the fact that the company had not previously exploited the asset in the territory concerned; nor was it relevant that the company had entered into a number of transactions for the disposal of know-how, as opposed to a single transaction, since in either case the price received would be a receipt of capital (cf. dictum of Lord Keith in the *Evans* case to the effect that if a trader makes a practice of turning a secret process to profit by selling it, there would seem to be no sound reason for saying he was not trading in know-how). Accordingly, the lump sum consideration represented the receipt of capital in the hands of the company and ought not to be brought into account in the computation of its revenue.

His lordship said that in the *Evans* case the agreement was divided into parts and the lump sum in question was allocated exclusively to the consideration specified in Pt. I of the agreement. In the present case there was no such division or allocation, and neither party at any stage of the proceedings had contended that on this or any other ground the lump sum should be apportioned so as to represent in part a capital and in part a revenue receipt. In view of the decision of the Lords in the *Evans* case he would not be entitled to make any such apportionment even if he were otherwise minded to do so. Counsel for the Crown, however, had pointed to certain apparent differences between the views expressed by the respective members of the House in that case as to the precise ambit of the capital asset there in question, i.e., whether it should be regarded as confined to secret processes or comprising also knowledge outside those processes. It might be necessary to explore this point further in the case where the secret processes were relatively unimportant or where there was an apportioning of the consideration, but he did not think it of practical importance in the present case.

Non-isolated sales taxable

The Court of Appeal, as we have already mentioned, has now reversed the decision of Pennycuick, J., in the *Rolls Royce* case, basically on the view advanced by Lord Keith in the *Evans* case that if a trader makes a practice of turning a secret process (or technical information) to account by selling it, there seems to be no sound reason for saying he is not trading in know-how.

Pearce, L.J., said that in the *Rolls Royce* case it was conceded by the Crown that, if on one occasion only the company had sold its technical knowledge for a lump sum, it would be selling a capital asset and the receipt of that sum would be a capital receipt. In the instant case, however, the agreement with the Republic of China did not stand alone. Similar agreements had been made with France, the United States of America, Argentina, Belgium, Australia and Sweden. In all cases the company paid the British Government one-third of the consideration received, for the reason that the cost of the research which led to the acquisition of the knowledge in question was partly defrayed by the Government, and without its consent the knowledge could not be disseminated. Against that background the Crown argued that those oft repeated sales of growing technical knowledge constituted receipts of the company's existing trade in the manufacture and sale of engines. It was not argued that the sales of know-how constituted a separate trade.

Almost all the territories to which the agreements applied were ones which the company could not hope to penetrate by any other methods and it was pursuing a wise policy of allowing local manufacture from which it would receive benefits. That was not in substitution for the company's policy of selling its own engines in countries where it could do so, but a collateral and supplementary method of trading in other territories. The knowledge was not some secret of permanent value sold by an owner who was transferring or terminating his business. That would clearly be the sale of a fixed asset. The knowledge was in the main the transient by-product of advancing engineering science which accrued automatically from the company's business of manufacture and was ever growing, ever changing. It was the valuable practical experience of years and was the kind of knowledge which could easily merge its character of a fixed asset into that of a trading asset. Indeed, it could find no place in any balance sheet. By contrast, secret knowledge was the more transient since it became more quickly obsolete. So far as the lump sums were paid in respect of the imparting of knowledge they were sums regularly received as an ingredient of the company's policy of making manufacturing agreements to secure royalty income. To such agreements the disclosing of technical knowledge was a necessary adjunct, but it was a means rather than an end. None of these considerations was conclusive in itself but taken together they had cumulative weight and the court felt compelled to the conclusion that the receipts in question were receipts on revenue account. Leave to appeal to the House of Lords was given.

Ambit of a capital asset

Pennycuick, J., had said earlier that in a suitable case it might be necessary to explore whether the precise ambit of a capital asset should be confined to secret processes or whether it also comprised knowledge outside these processes. Pearce, L.J., pointed out that the agreement with the Republic of China was "one undivided whole" and that the payment of £50,000 was consideration for all the benefits obtained under it. He was clearly of opinion that, though the imparting of technical knowledge was a major consideration for the lump sum payments, that did not take the payments out of the category of trading receipts when the rest of the agreement was devoted to producing trading receipts. Possibly the distinction (if any) for tax purposes between secret processes proper and the fruit of manufacturing experience may fall to be decided in some later case where there is a single sale and, unlike the *Evans* case, secret processes and manufacturing experience are not both comprised within the same agreement or the same indivisible part of an agreement. Certainly a decision on this point would be useful.

K. B. EDWARDS.

COLONIAL LEGAL APPOINTMENTS

The following appointments are announced by the Colonial Office: Mr. A. KHAN, Magistrate, British Guiana, to be Senior Magistrate, British Guiana; Mr. D. H. B. S. NIELSON, Lands Officer, Nyasaland, to be Senior Lands Officer, Nyasaland; and Mr. M. J. J. L. RIVALLAND, Puisne Judge, Mauritius, to be Senior Puisne Judge, Mauritius.

THE REBATE QUESTION

AMONG the reported abuses in hire-purchase financing few have attracted more attention from investigators, both here and abroad, than the rebate question. The problem arises in this way, although the following discussion of its ramifications is intended to be anything but exhaustive.

When a hirer wishes to acquire goods on the hire-purchase plan, the hire-purchase company arrives at the hire-purchase price by adding to the cash price a sum usually denoted as the "hire-purchase charge." This misleading term has nothing whatever to do with use and possession of the goods by the hirer, but refers to the compensation which the hire-purchase company expects to receive from him in return for allowing him the use of its money—represented by the cash price of the goods (less any deposit)—for a stipulated period. It is, in effect, an interest charge. Thus, if the unpaid balance of the cash price of certain goods is £100 and is to be paid by the hirer over the period of a year, a hire-purchase company seeking a return of 10 per cent. per annum (ostensible, not true rate) on its money will add a hire-purchase charge of £10.

Suppose, however, that the hirer wishes to pay off the whole outstanding balance at the end of the sixth month. This may be because he wishes to sell the article privately, or, if an automobile is involved, use it as a "trade-in" in the purchase of a new vehicle, or perhaps because he has died and his executors wish to liquidate his estate. Whatever the reason for the prepayment, the hirer will not have had the use of the hire-purchase company's £100 for the anticipated period. Conversely, if the hirer is still obliged to pay the full £10 hire-purchase charge, the company will be receiving a flat return on its money not of 10 per cent. but of 20 per cent. What, then, is the hirer's position in law? Unfortunately, it appears to be only too simple. In the first place, whatever be the economic effect of the transaction, legally the company is not lending any money (*Olds Discount Co., Ltd.* v. *Cohen* [1937] 3 All E.R. 281 *n*); hence no question of interest arises. In the eyes of the law, all that the hirer is paying (apart from the initial deposit) is a stipulated rental for the use and possession of the goods (cf. *Brooks* v. *Beirnstein* [1909] 1 K.B. 98), and the fact that the hire-purchase price is computed in the same way as if a sum of money had been loaned to him for a predetermined period is irrelevant from the legal point of view. In the second place, even if a loan were involved, there is nothing to prevent the parties from agreeing that it shall not be repaid before a certain period; this is true even in the case of mortgages, where the length of time is not unreasonable (*Biggs* v. *Hoddinott* [1898] 2 Ch. 307).

Overseas examples

It follows that only Parliament can redress what otherwise would be an inequitable situation. To argue, as some apologists for the present position have done, that no one compels the hirer to anticipate his obligations, is to ignore, first, that the hirer frequently has no option in the matter, as, for example, where he wishes to use the goods as a "trade-in," secondly, that it is in the interest of the companies not to discourage the practice since it makes for fewer bad debts, and, thirdly, that prepayment does not leave the companies with idle moneys on their hands, since in the normal course of events they can re-employ the prepaid balances almost immediately in the financing of other contracts. In fact the problem has already been dealt with by legislation in many other common-law jurisdictions. Thus the Hire-Purchase Acts (or their equivalents) in New Zealand, New South Wales, Victoria, Queensland, Quebec (a civil law jurisdiction) and many American states expressly confer upon the hirer or buyer in an instalment sale the right to a rebate in the case of prepayment of the whole, and sometimes only a part, of the hire-purchase price. Section 11 of the Victoria Hire-Purchase Act, 1959 (Act No. 6531), is typical of the provisions to be found in the Australian Acts. It reads as follows:—

> "11. (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention so to do, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due to the owner under the agreement.
>
> (2) For the purposes of this section the net balance due shall be the balance originally payable under the agreement less any amounts paid or provided under the agreement by the hirer on account of instalments rentals or hire (other than the amount paid as deposit) and less—
>
> (*a*) the statutory rebate for terms charges;
>
> (*b*) if the hirer requires any contract for insurance to be cancelled, the statutory rebate for insurance;
>
> (*c*) if the hirer requires any contract for maintenance to be cancelled, the statutory rebate for maintenance.
>
> (3) The rights conferred on the hirer by this section may be exercised by him—
>
> (*a*) at any time during the continuance of the agreement; or
>
> (*b*) where the owner has taken possession of the goods, on paying or tendering to the owner . . . in addition to the net balance—
>
> (i) the reasonable costs incurred by the owner and incidental to his taking possession of the goods; and
>
> (ii) any amount properly expended by the owner on the storage, repair or maintenance of the goods."

"Terms charges" is not defined (see, however, s. 3 (2) (ix)), but is merely another name for hire-purchase charges. The meaning of "statutory rebate," as defined in the Act, will be explained presently.

How is the rebate to be determined?

Assuming, then, that the right to a rebate is conferred by statute, how is the rebate to be determined? Simply to take the hire-purchase charge, divide it by the number of instalments in the agreement, and then multiply the figure by the number of payments anticipated will not yield an accurate result, since the hire-purchase (i.e., interest) charge is not uniform throughout the life of the agreement. It varies with the amount outstanding, and since the latter is gradually declining with each payment it follows that the portion of the hiring charge being earned is reduced proportionately. A method of calculation widely used to determine the appropriate rebate which takes these factors into account is the "sum of the digits" method, or, as it is also called, "the rule of 78's." The latter name is derived from the fact that the sum of the months, 1 to 12, in a year is 78; and the method proceeds on the assumption that the portion of the hire-purchase charge being earned during any given period bears a constant ratio to the amount outstanding. If, for instance, the unpaid balance of the purchase price is to be paid in equal instalments over the course of a single year, 12/78ths of the hire-purchase charge will be deemed to have been earned in the first month, 11/78ths in the second month, and so on. If the price is

payable over two years the fraction will be 24/300ths in the first month, 23/300ths in the second month, and so forth, 300 being the sum of the digits 1 to 24.

An example will illustrate the practical effect of this method of calculation. Suppose the hire-purchase charge is £39 for one year, and that the hirer repays the balance of the purchase price at the end of the seventh month. The unearned fraction of the hire-purchase charge will then amount to $^{15}/_{78} \times$ £39, i.e., £7 10s., the numerator 15 representing the sum of the digits 5, 4, 3, 2, 1. If the direct ratio method were used the sum of £16 5s. would have been arrived at, i.e., $^{5}/_{12} \times$ £39. Consequently there is an important difference between the two methods. The sum of the digits method is the approved method of calculation in the definition of "statutory rebate" in the Australian Acts (see, for example, s. 2 (1) of the Victoria Act, *supra*) and in the majority of the American Acts.

There is, however, a further difficulty which must still be considered. A large number of factors enter into the computation of the hiring charge, but the principal ones are: 1. The cost of the money to the hire-purchase company itself, assuming the company operates on borrowed funds. 2. The rate of return which the company expects on its capital. 3. The commission which, as in the case of motor vehicles, the company has to pay the retailer for introducing the hirer. 4. The operating costs incurred by the company in servicing the contract, such as clerical expenses and other overheads. 5. The initial, or acquisition, costs incurred by the company when it first concludes the agreement with the hirer. Of these five items the first four depend (or may reasonably be regarded as depending) upon the actual length of the contract, but the fifth is of a fixed nature and is the same whether the hire-purchase agreement is for one month or for twelve. Consequently, in fairness to the finance company, some allowance should be made for this fixed charge in calculating the rebate. The Australian Acts do not appear to do so, but the American statutes are more generous. The latter have adopted one of two methods for dealing with the problem. The first, and the simpler, is to allow the financing agency to deduct a fixed amount (ten to fifteen dollars, for example, in the case of New York) from the hire-purchase charge before the rebate is computed. The second is based on the assumption that the initial costs are recovered during the early life of the agreement and permits the company to deduct a given percentage (20 per cent., for example, in the case of Wisconsin) from the hire-purchase charge, but only if the contract is terminated within the first few months of the agreement.

Finally, we may note another reason sometimes given by finance company spokesmen for the companies' refusal to grant a rebate in all cases of prepayment. It is that, in a given case, the hirer may have been very dilatory with his payments or otherwise have given the company a great deal of trouble. It is suggested, however, that the proper way to deal with such cases is not to deprive the affected hirers of their rebate rights, but to permit the companies to impose a small delinquency charge for late payments and/or to collect an additional increment of interest in respect of the period for which any instalment is overdue. This is the approach adopted in the American Acts.

Conclusion

In the light of the preceding discussion it is submitted that, both on principle and on legislative precedent in many common-law jurisdictions, there is ample justification for an amendment to the English Hire-Purchase Acts conferring on hirers the right to a rebate in case of prepayment. It is, moreover, suggested that any remedial legislation should embody the following points:—

(1) The hirer should be entitled to a rebate in all cases of prepayment of the whole outstanding balance of the purchase price, irrespective of whether such prepayment is voluntary or follows repossession of the goods. Whether the right should also exist where prepayment consists only of a part of the outstanding amount is perhaps an arguable point. More evidence would appear to be needed to determine (*a*) the frequency of such partial prepayments, and (*b*) the additional clerical work involved for the companies as compared with the amount of rebate to which the hirer would be entitled.

(2) The rebate should be calculated by means of the sum of the digits or any other method which produces the same result.

(3) An allowance to the finance company in respect of its initial costs, deducted from the hire-purchase charge before computing the rebate, would be equitable.

(4) The hirer should be entitled to the rebate irrespective of any alleged delinquencies on his part. If it is thought appropriate to compensate the finance company for any losses or additional expenses incurred by it as a result of such delinquencies, this should be dealt with separately.

JACOB S. ZIEGEL.

THE *ACCOUNTANT* ANNUAL AWARDS

The *Accountant* annual awards, which are made annually to companies whose shares are quoted on a recognised stock exchange in the United Kingdom, in relation to the form and content of their published reports and accounts, are to be given for 1961 to Allright & Wilson, Ltd., and the Prestige Group, Ltd. The Lord Mayor of London will present the awards at the Mansion House on 30th May.

LAW SOCIETY'S INTERMEDIATE EXAMINATION

At the March Intermediate Examination 324 candidates sat for the Law Portion, of whom 205 passed. Four candidates were placed in the first class. In the Trust Accounts and Book-keeping Portion 439 candidates sat, of whom 276 passed, five with distinction. The Herbert Ruse Prize, value £12, has been awarded to Alan Patrick Thomas, LL.B. Wales.

COUNTY COURT BENCH

Mr. WILLIAM GERARD MORRIS has been appointed a Judge of County Courts and will replace His Honour Judge Trotter as the second judge of Circuit 8 (Manchester and Leigh). Judge Trotter will replace His Honour Judge Steel on Circuit 5 (Bolton Burnley, etc.), and Judge Steel will succeed the late Judge Batt as one of the judges of Circuit 8.

OCCUPATIONAL RISK?

A woman who pleaded guilty to sending a letter threatening to kill her solicitor was sentenced to eighteen months' imprisonment at London Sessions on 26th April.

GREAT ADVOCATES

The next advocate to be portrayed in the series of Home Service wireless programmes written and narrated by Lord Birkett is Sir Rufus Isaacs, K.C. (Lord Reading), on Sunday, 7th May.

County Court Letter

THE MEN WHO NEVER WERE

It has not been disclosed whether Major Yuri Gagarin is a lawyer, but it may well be so. In any event, lawyers have a strange habit of cropping up in all sorts of unlikely places. Currently they may be found writing best-selling novels, piloting motorboats at incredible speeds for record-breaking periods, directing the destiny of commerce and/or the country, and playing double bass in a jazz band, to mention only a few of their activities. Adaptable people they are, and during the war they were to be found doing all sorts of jobs not of a strictly legal nature. One remembers that gallant commander of a famous fighter squadron; that fighter station about the time of the Battle of Britain whose learned lawyers occupied the posts of Squadron Leader Operations, Station Administrative Officer, Signals Officer, and sergeant R.A.F. Police, as well as other less high-sounding but much more important positions. Any H.Q. invariably had its quota of lawyers, sometimes even in Intelligence, the general idea apparently being that they were inclined to be fairly sensible, adaptable people, and, let us admit, sometimes useful on courts-martial, however much they themselves might protest.

It seems inevitable, therefore, that there were lawyers on that Combined Ops. H.Q. that thought up the Man Who Never Was, and indeed, Men Who Never Were have been a feature of the legal scene since time immemorial. Two of the earliest specimens of the genus were our old friends of the conveyancing world, John Doe and Richard Roe, who certainly had their uses, if the pun may be forgiven. This is not to imply that the author of "Here and There" is a figment of anyone's imagination—he is most satisfyingly real, but he became so only after many years of existence as a non-existent person.

A later arrival on the scene was that paragon of normality, the man on the Clapham omnibus. Why going to, or possibly coming from, Clapham should be such a test of averageness remains obscure, but there it is. It would seem probable that the gentleman was a smoker, because in some cases at least, he is referred to as riding on the top of the omnibus. Or perhaps he just liked the fresh air.

The reasonable man

The fourth member of the class is the Reasonable Man. It was Sir Alan Herbert—a lawyer, needless to say—who pointed out in one of his most satisfactorily misleading Misleading Cases that, though the court had frequently considered the reactions of the Reasonable Man, it had never even mentioned the Reasonable Woman, from which it must be assumed that the law did not contemplate such a creature as existing. The recent case with the good scrapping name of *Cooper* v. *Dempsey*, p. 320, *ante*, does nothing to suggest that this view is incorrect.

The facts of this case, which was originally heard at Plymouth County Court, were that a motor car owner took his car to a garage for repairs. The garage proprietor parked it in an open park behind the garage where he also kept cars belonging to the garage, and where in addition were parked from time to time the cars of persons using a café run in conjunction with the garage. There was another entrance to the park leading into a side road, and it seems that some unauthorised person took the car out and crashed it, causing considerable damage. The owner sued the garage proprietor for damages for negligence.

The evidence suggests that it was the normal practice of the garage proprietor to leave cars parked in this car park open, and with their ignition keys in place. The inevitable question arose—was this the act of a reasonable man?

It may well be that the defendant in the witness box was the epitome of reasonableness. In any event, the judge, possibly persuaded by the fact that he took no further steps to protect his own cars, decided that leaving a car thus open to misappropriation was not unreasonable, and found for the defendant. The plaintiff appealed.

The Court of Appeal, which, of course, does not normally see witnesses, thought otherwise. Perhaps it remembered the constant exhortations by chiefs of police to motorists not to leave their cars unlocked, and above all, to remove ignition keys. In any event, it decided that a reasonable and prudent man would not have left his car so at the mercy of persons with liberal views on the sanctity of ownership, and allowed the appeal.

Never a chance

The Court of Appeal having spoken, that is an end of the matter, but the case leaves some interesting questions unanswered. For instance, it would seem that it would have been reasonable if the ignition key had been removed, even if the car had been left unlocked. But one reads, and indeed, one even sees on the telly, how car thieves read the number of the ignition lock on a car and then go and buy the appropriate key from any garage. The police, we understand, have keys that will unlock any car so that they can tow it away to the discomfiture of the owner and their own profit. The ignition lock therefore seems to present but scant security in fact.

And another thing—the garage proprietor subjected the plaintiff's car to no greater risk than his own. Can the reasonable man never take any chance at all? Can he not have a bet on the 2.30? Or is he reasonable only if he does it on information received, and not by operation of a pin? Different people will clearly have different ideas about what is, and what is not, prudent, but it would be hard to find any man who at some stage or another has not had to take a chance, for better or worse. If by doing so he loses the right to be called a reasonable man, the reasonable man, if he exists, must be a mighty dull fellow. You would most certainly not find him in a space capsule, or indeed anywhere else where men are respected, honoured and admired.

J. K. H.

Law Lecture

A special university lecture in laws on "Unification of Patent Legislation on the European Market" will be given by Dr. Fredrik Neumeyer, Dr. Ing., Dr.Rer.Pol.h.c., at the London School of Economics and Political Science, Houghton Street, Aldwych, W.C.2, at 5 p.m. on Tuesday, 9th May, 1961. The chair will be taken by Professor L. C. B. Gower, M.B.E., LL.M., Sir Ernest Cassel Professor of Commercial Law in the University of London. The lecture is addressed to students of the University of London and others interested in the subject. Admission is free, without ticket.

THE POWER THAT VANISHED

THE power of a limited company to hold land has not in the past been called into question because the Companies Act, 1948, s. 14 (re-enacting provisions of previous Companies Acts) gave all but certain non-profit-making companies a general power to hold land. Section 408 of the Act extended this power to oversea companies complying with the Act's provisions as to registration in this country. This statutory power had a dual effect: it gave a licence in mortmain to the companies concerned, and it also gave them a power which did not have to be explicitly set out in the memorandum of association as an object of incorporation in order to be validly exercisable. This power is no more. In accomplishing that long-awaited reform, the abolition of the law of mortmain, on 29th July, 1960, the Charities Act, 1960, s. 38, repealed ss. 14 and 408 of the Companies Act, 1948.

The general proposition of company law must now apply to the power to hold land: a company has power to do all legal acts in performance of the objects of its incorporation set out in its memorandum of association, but all other acts are *ultra vires*. One must add that "anything fairly incidental to the company's objects as defined is not (unless expressly prohibited) to be held *ultra vires*" (*A.-G.* v. *Great Eastern Railway Co.* (1879), 11 Ch. D. 449, at p. 480). It follows that those concerned in the conveyancing of land in which a company has or wishes to acquire an interest must now concern themselves with its objects as set out in its memorandum, even if it was incorporated to trade for profit. In the great majority of cases there will be no difficulty as the prolix forms of objects clauses commonly employed give full powers to acquire, hold, deal with and dispose of land. But there are companies in existence with more limited objects that do not cover holding land—many are old companies which may have revised their articles while leaving their memoranda in their original form—and some of these are at present holding land. Oversea companies, also, may well be found with less comprehensive objects.

Effect of lack of powers relating to land

It is proposed to examine what effect such a lack of express powers relating to land would have on various conveyancing transactions. One thing seems clear: a contract entered into by a company that is *ultra vires* its memorandum is void and incapable of ratification: *Ashbury Rail Carriage and Iron Co.* v. *Riche* (1875), L.R. 7 H.L. 653. A vendor who contracts to sell to such a company will have no remedy if it repudiates the contract. In the absence of information supplied by the company's solicitors, a search of the company's file to read its memorandum before exchange of contracts therefore seems advisable. Reliance may, however, be placed upon the power to do acts, not themselves expressly authorised, which are incidental to the company's stated objects. How far may a person dealing with a company question its activities and intentions? The contents of the filed documents are presumed to be known to all (*Mahoney* v. *East Holyford Mining Co.* (1875), L.R. 7 H.L. 869), so the prospective vendor must be entitled to satisfy himself that a proposed acquisition is *intra vires* where there is no apparent connection between it and the company's authorised business. One can conceive that it would be prudent to inquire, for instance, how it was contended that the ownership of a slag heap was "fairly incidental" to the business of a wholesale fishmonger.

Although it has been stated that there would be no remedy available where a company repudiated an *ultra vires* contract, it may be that there would in fact be a remedy against the company's solicitor personally. In a case where a company had no power to contract, it seems likely that it would have no power to employ a solicitor in that connection. The solicitor's contract with his "client" being void and non-existent, he would have been acting without instructions. Upon his implied representations that he was properly instructed one might successfully found an action for breach of warranty of authority. Such a case would be analogous to the decision in *Yonge* v. *Toynbee* [1910] 1 K.B. 215, where a solicitor was successfully sued for breach of warranty of authority when he had taken steps in an action on behalf of a principal whose insanity had previously terminated his authority.

Completion of unauthorised purchase

Where there is no question of repudiation of the contract, and the company completes the unauthorised purchase, the question of the validity of its title then arises. It might be argued that without power to acquire land a company is incapable of accepting a conveyance. But if the vendor validly conveyed away the land, in whom is it now vested? Should one regard the transaction in the same light as a purported conveyance of land to an infant, saying that the vendor holds the land on trust for the impotent company? This solution is not regarded as acceptable because in the case of infants it was necessary to legislate to obtain this result (Settled Land Act, 1925, s. 27), and no comparable provisions can here be prayed in aid. Short of forfeiture to the Crown—which, even in the case of the law of mortmain, so it transpired at a late date, was not automatic—there seems no other conclusion than that the company now owns the land. Most writers agree that it seems that rights acquired as a result of *ultra vires* expenditure of capital may be enforced and protected against third parties. This supports the proposition that a good title may be acquired as a result of an unauthorised transaction, and in this respect the company's position would be secure.

The question of whether the vendor has any rights against the company after completion which would disturb the company's title must be considered separately. It has been held that each party to an *ultra vires* contract can recover assets transferred still in the other's hands: *Cunliffe Brooks & Co.* v. *Blackburn Benefit Society* (1884), 9 App. Cas. 857. This would result in the company's title being voidable. Doubt has more recently been cast upon this possibility in any but cases of *ultra vires* borrowing, and American practice is not to allow property to be recovered after completion.

On the question of such a company's title, the position of registered land is anomalous. Rule 259 of the Land Registration Rules, 1925, provides that, upon an application for registration as proprietor of land by a corporation, there shall be produced evidence of power to deal with land. The registrar would not register as proprietor a company without power (express or implied) to hold land. If it is correctly contended that such a company can become the owner of land, this seems illogical and inconvenient. In one case, however, it is unjust. Were the company to acquire land in an area of compulsory registration, the conveyance to it would be void after two months unless it had applied for registration: Land Registration Act, 1925, s. 123 (1). It must follow that if the application made within the time limit was rejected (as it must inevitably be), the conveyance would be equally void.

Position of purchaser from a company

The purchaser from a company is also concerned with its powers, but to a more limited extent. Power to acquire land implies power to sell it, and a transaction to rid the company, at a proper price, of assets it was not empowered to hold, seems unobjectionable. There will still, however, be the risk of repudiation of the contract before completion. Further, the contractual parts of a conveyance, the "beneficial owner" covenants and undertakings for the safe custody of deeds, would be nugatory. (This would apply similarly, where the company was the purchaser, to indemnity and other positive covenants; restrictive covenants might be more favoured.) How secure would the purchaser be from the vendor to the company? Because of the public nature of the memorandum of the company, the purchaser could not claim ignorance of the possible fault in his title, and could not be a bona fide purchaser for value *without notice*. However, as the nature of the claim would be rescission of the contract of sale to the company and as "equity aids the vigilant and not the indolent," it is to be hoped that equity would see its way to avoiding a course which would lead to an irremediable uncertainty in some titles.

Leases present more difficult problems owing to their hybrid nature, partly property interests, partly contractual. The same general considerations must apply, and in so far as a lease is a continuing contract a company acting *ultra vires* could repudiate at any time. There seems to be no authority, but it may be that the term of years would automatically terminate upon such repudiation. It would indeed be strange if the term went on but the obligations such as payment of rent came to an end. On the assumption that the term itself determined, it is submitted that a claim for the recovery of money paid under the lease before termination would not be successful. The defence might either be that the money was paid under a mistake of law, not of fact, or perhaps that there was no mistake and that until repudiation the lease (as an interest in property granted or accepted by the company) was valid. The latter reasoning might be used to support a claim for arrears of rent due prior to repudiation, but a landlord might be in difficulties in view of the decision in *Re Jon Beauforte (London), Ltd.* [1953] 1 Ch. 131, where a supplier of goods on credit to a company lacking the power to buy them was unable to prove for the price in a liquidation.

The position is far from clear. It must be regretted that legislation has, it is assumed unintentionally, plunged conveyancers into a wilderness of doubt. As the Cohen Committee reported, "the *ultra vires* doctrine serves no useful purpose but is, on the other hand, a cause of unnecessary perplexity and vexation." There would seem to be a case here for legislation, be it a reintroduction of the repealed sections or more sweeping reform, which could conveniently be considered by the Jenkins Committee on Company Law.

T. M. A.

Landlord and Tenant Notebook

CONDITIONAL NOTICE TO TERMINATE

THE events which occasioned the litigation in *Barclays Bank, Ltd.* v. *Ascott* [1961] 1 W.L.R. 717; p. 323, *ante*, an action for possession, began with the coming into force of the Rent Act, 1957. For when that happened the premises concerned, which were "combined premises" held by the defendant on a weekly tenancy, were decontrolled but automatically transferred to the protection of Pt. II of the Landlord and Tenant Act, 1954, as its s. 43 (1) (*d*) no longer excluded the tenancy from that Part. Negotiations were then carried on for a new tenancy, to be granted to the defendant and her sister-in-law, her brother to guarantee rent; but when a draft agreement had been submitted negotiations broke down over a question of state of repair. So on 14th April, 1958, the plaintiffs served what was meant to be a "s. 25 notice" to terminate the tenancy on 20th October of that year.

Subsection (6) of that section says: "A notice under this section shall not have effect unless it states whether the landlord would oppose an application to the court under this Part of this Act for the grant of a new tenancy and, if so, also states on which of the grounds mentioned in s. 30 of this Act he would do so." By subs. (1) the notice has to be in the prescribed form, which means the form prescribed by regulations (s. 66 (1)); and the 1957 regulations say that Form 7 in the Appendix, or a form substantially to the like effect, shall be used for this purpose.

Digression

The notice which was served faithfully followed what was prescribed—up to a point. It told the defendant that her tenancy terminated on 20th October, and that she must notify the landlords within two months whether she would give up possession on that date. It then said: "(3) We would not oppose an application to the court (Note 3) under Pt. II of the Act for the grant of a new tenancy (Note 6)"—and if its para. (3) had said nothing more all would have been well. But, with the best of intentions, as Barry, J., said, the following had been added: "provided Mr. George Ascott of . . ., or some other person approved by us, is a guarantor for payment of the rent and performance and observance of the covenants or agreements to be performed and observed by you in relation to such new tenancy, as already agreed by you." The rest of the notice followed the words of the prescribed Form 7.

The tenant did not serve any counter-notice under subs. (5), and would therefore not have been qualified to apply for a new tenancy (s. 29 (2)). Her defence to the action was that the notice had been invalid because ambiguous. In other words, she relied on s. 24 (1): "A tenancy to which this Part of this Act applies shall not come to an end unless terminated in accordance with the provisions of this Part of this Act."

Ambiguity

The plaintiffs' contentions followed the familiar "knew very well what was meant" lines. The tenant, it was argued, could (after studying the Act, or just the Notes—which are added pursuant to s. 66 (2): "Such an explanation of the relevant provisions of this Act as appears to the Lord Chancellor requisite for informing persons . . . of their rights and obligations . . .") have inferred that, by not saying on which of the s. 30 (1) grounds opposition would be based, the landlords had intimated either that they agreed to or would not oppose an application. But, Barry, J., said,

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in effect, that would not help her: the conclusion would be that the non-opposition depended entirely on her agreeing to provide a guarantor; and if she proceeded to negotiate, she would not be able to object to the guarantee stipulation. She might, by further study, appreciate that the landlords would be in a difficult position by reason of their failure to specify a ground of opposition; but a tenant is not bound to try to rectify that position, any more than it would be his duty to inquire on what ground opposition would be based.

The effect of the notice was that the landlords would oppose an application for a new tenancy unless Mr. George Ascott, or another approved person, guaranteed payment of rent and performance of covenants, and the notice was insufficient.

Might have been

The learned judge remarked that the landlords, who had acted with the best possible intentions, might have worded their notice so as to convey the following: "We are not going to oppose an application for a new tenancy, but we give you warning that we are going to insist, in so far as we can and for as long as we can, that you provide [Mr. George Ascott] as guarantor." Whether an order for a new tenancy could order a guarantee is, of course, another matter.

The Landlord and Tenant (Notices) Regulations, 1957, reg. 4, prescribes for the use of forms in the Appendix "or forms substantially to the same effect," and cases illustrating the latitude allowed were discussed in the "Notebook" for 12th June, 1959 (103 SOL. J. 466). A reference to those decisions, together with the new one, invites the reflection that it is less dangerous to leave something out than to add something; omission leaving something to the recipient's imagination is less likely to prove fatal than unauthorised addition. While, as Barry, J., said, the landlords in *Barclays Bank, Ltd.* v. *Ascott* no doubt could have worded their notice so as to convey what they intended, it would, I submit, be safer in such circumstances to accompany the notice by a letter, stating that that letter is without prejudice to the notice, and inviting the tenant to continue negotiations with a view to obviating the necessity of an application.

R. B.

HERE AND THERE

MORE DIVORCE WORK

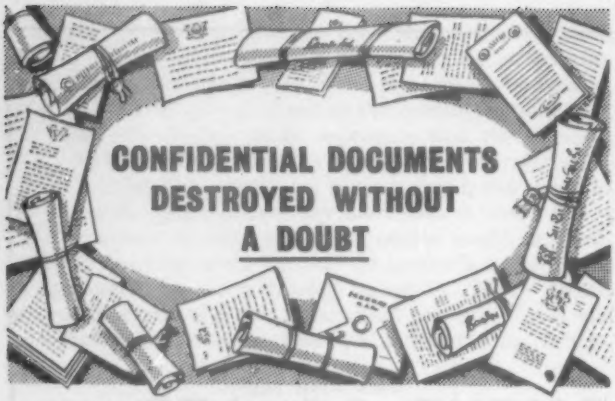
Do you know that when the Law Courts in the Strand were opened in 1883 there were only two judges from the Probate, Divorce and Admiralty Division, that peculiar and paradoxical composite, which only the irrationally habit-loving English could ever have perpetuated in the midst of what was supposed to be a radical reorganisation of our legal system? One pictures the President of the Division like a juggler tossing up and catching three contrastingly coloured balls, while his assistant stands behind him just in case he should be needed. O matrimonially peaceful England! Now there are how many judges in the Division? Ten? Eleven? One loses count. It is not a sudden increase in viciously disputed wills that they are all working at. Inheritance and the prospects of stepping into dead men's shoes were once supposed to bring out the worst in human nature. But perhaps the rich uncle or aunt, harried by the fiscal big-game hunters, is now an almost extinct mammal, and the pelts of the small game are scarcely worth litigating about. If it is not wills that are bringing work to the judges, even less is it shipwrecks. Splendid ships are not piling up on shoals and rocks, colliding with each other and sinking to the bottom at any markedly increased rate. Indeed, modern devices make for greater safety on the trade routes of the seven seas. But what modern device has been invented to diminish the perils of the largely uncharted oceans of matrimony? None, it would appear, or else devices which work all the other way, for it is with the wreckage beyond salvage in those stormy waters that all this extra judge-power has been generated to deal.

ANTHOLOGY OF RIGHTS

IT behoves us therefore, every now and then, to take a look at the picture of British matrimony in the mid-twentieth century which emerges from the co-operative efforts of so many jurists. A daily newspaper, approaching the matter of the rights of wives by way of anthology, has recently produced modern judicial authority for several propositions which, if incorporated in a formal marriage contract, would, at certain points, make formidable reading for the prospective husband. A wife has a right to be continually wooed, "tactfully with love and affection." She also has a right to be fed, but she owes no duty not to mis-cook her husband's food. She may refuse to provide him with a clean shirt and underwear daily. It is unco-operative, but not cruel, if she refuses to take his telephone messages. She has a right not to be driven to bed at 9.00 p.m., even if her reason for wanting to stay up is to see "Bootsie and Snudge" on the "telly." She has a right not to be spanked. She has a right to demand that her husband shall not let her friends see him flirting with someone else. She has a right to be taken for a holiday, anyhow once in twenty years. She has a right to know where her husband spends his evenings and his nights. She has a right to prevent him living idly on her earnings.

PERTINENT QUESTIONS

IF courting couples had their wits about them, the reports of matrimonial cases would inspire them to ask each other the most extraordinary questions when they gazed into their connubial future. "Darling," a radiantly lovely girl would say to her intended, "I know you love Polly, your Lurcher bitch, but if you had to make up your mind whether to share your bedroom with her or with me, which would you choose?" Even in dog-loving England a judge remarked that it "must have been very distressing and degrading" for a wife "to take second place to a dog." Another recent case suggests that the betrothed of chartered accountants would perhaps do well to ask coyly at some propitious point in their wooing: "Dear one, when we are in bed together will you or will you not set me mathematical problems?" Young wives would also do well to select with care the locality of the matrimonial home with an eye to the customs prevalent among the inhabitants. "Cruelty, even by the standards of the King's Road, Chelsea," is a judicial utterance worthy of some meditation. Now another judge has had regard to the sort of life led in Kilburn in 1961. That pattern of life includes a few pints of beer too many for the husband and occasional quarrels in which he got his face scratched and she got a black eye. But that's life—anyhow in Kilburn, and the black eyes are not cruelty. It is not only the ways of life of Chelsea and of Kilburn that



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our versatile judges must visualise. What about nudist conventions as revealed in the case of the nudist husband and wife who invited an apparently equally nudist guest to share their bed with them? After a while the traditional triangle developed and the husband (to quote the judge who tried the case) " handled a starting pistol, which was used for starting races, in a menacing way," a most ill-omened gesture, since, as if at a signal, the wife and the guest ran off together, leaving the husband, as it were, on the starting-line, but with the consolation that eventually the judge held that (by nudist standards) he had not connived at his wife's adultery.

ERRATUM

I AM much obliged to a correspondent who noticed that in my quotation from " King John " last week " wasteful and ridiculous excess " became, by a combination of penslip and proof-slip, " expense " instead. It was all the sillier because, not having been able to pin down Act and scene from memory, I had the book open before me. It is ironical that in castigating a stale old misquotation I should have produced, as it were in exchange, a mint-new one. It recalls the old newspaper story of the editor apologetically correcting " battle-scared veteran " to read " bottle-scarred veteran." However, I hope the slip has not obscured the point. " Gilding the lily " is bad but, as a piece of cliché writing, " painting the lily," endlessly reiterated in mere mechanical second-hand quotation, would not be much better. Out they come, the worn-out word combinations, " last but not least," " not wisely but too well," " few and far between," " how are the mighty fallen," " ignorance is bliss," " an absolute shambles," " bring the house down," " proud as a peacock," " mealy mouthed," all the prefabricated phrases which most of us slip into occasionally in moments of semi-consciousness, but, for Chaucer's and Shakespeare's and Dr. Johnson's sakes, don't let's make a habit of it. P.S. Further, at p. 361, *ante*, for " beauteous eyes " read " beauteous eye."

RICHARD ROE.

LADIES' ANNEXE AT THE LAW SOCIETY'S HALL

BY A SPECIAL CORRESPONDENT

> " Were it not better done, as others use,
> To sport with Amaryllis in the shade,
> Or with the tangles of Neæra's hair? "

Who would have believed that The Law Society, when at last it opened its doors to " the Sex," would be so Miltonic in its choice of décor to set off the charms of the wives and sweethearts of its members? For indeed the predominant colour of the elegant flock wallpaper, the chaste covers of the banquette seats, and even the walls of the lavatories, of the new Ladies' Annexe at The Law Society's Hall is described by the designer, Mr. Michael Inchbald, as " Amaryllis, or pale Flame." To one visitor at least the colour was so entrancing that the use of the pretty Greek word for yellow, however inexact as a description, could be forgiven; anything could be forgiven to a designer who had the courage to create such an enchanting little corner in the rather grubby deserts of W.C.2.

When the Press were allowed a preview of the new annexe on 25th April, against the background of the reassuring sound of champagne bubbling into glasses, uninhibited expressions of admiration could be heard from the most blasé journalists. The Law Society has waited a long time before following the general trend of clubs and other associations—compare, for instance, the facilities available for the entertainment of guests, both male and female, which have been available at British Medical Association House for many years—but the accommodation now provided is splendid enough to silence any criticism on the ground of delay.

In the cocktail lounge, decorated in the favoured simple-baroque style (that is, elaborate and expensive materials used with almost stark simplicity but relieved by restrained and even more expensive ornament), elegant padded leather, real marble in white and black, and unashamed imitation marble wall-paper in blue, contrive to give an air of cool luxury very well suited to the ingestion of exactly the right number of dry martinis.

The dining-room itself, glorious with colour, cannot fail to stimulate a nagging thought: can the food possibly live up to the décor? Sad experience teaches that it is so often in simple or even drab surroundings that the best food is to be found. But the new kitchens give hope that something will be done to provide more sophisticated fare than that which, we are told, solicitors order if left to themselves.

Empty of guests, with tables gleaming with silver and linen, the rooms have the look of a film set awaiting the actors, and it is not easy to imagine them filled with solicitors and their ladies. Guests should be warned of the brilliance of the colours and the lighting: what *could* we wear to compete with that lovely " pale flame " which is not pale at all but would make even a Bermuda tan look faded? What make-up would help us to do justice to the perpetual sunshine of the louvred arcades? Perhaps Sir Thomas will have pity on us, and arrange for a fashion adviser and make-up expert to be provided in the elegant " powder-room," or if not this, at least Chitty's Statutes on the dining-room shelves might give way to books on beauty and fashion. But in spite of such competition from the background, the guests are going to love it: unattached solicitors should be in great demand as escorts, and there may well be a fashionable trek from Mayfair and Chelsea to Chancery Lane—but only for lunch: alas, dinners will not be served, or at least not for the present.

" THE SOLICITORS' JOURNAL," 4th MAY, 1861

ON 4th May, 1861, THE SOLICITORS' JOURNAL published two interesting advertisements. The first: " ATMOSPHERIC CLOCKS OR MERCURIAL TIMEKEEPERS. These ingenious and simple timekeepers are the most remarkable scientific novelties of the day. They indicate time by the gradual descent of a column of mercury in a glass tube which when descended, or nearly so, the clock merely requires to be reversed. In appearance they resemble the thermometer. Prices 4s. 6d., 5s., 10s. 6d., 12s. 6d., 15s. and upwards. The guinea clock with silver dial makes an elegant present. They are adapted to all climates, never get out of repair, nor require cleaning. For India and the colonies they are very suitable." The second: " WINES for the NOBILITY and GENTRY. WINES for the ARMY and NAVY. WINES for the CLERICAL, LEGAL and MEDICAL PROFESSIONS. WINES for PRIVATE FAMILIES. PURE and UNADULTERATED GRAPE WINES from the SOUTH OF FRANCE. VENDED by the PROPRIETORS of the VINEYARDS. THE FRENCH VINEYARD ASSOCIATION have taken extensive cellarage in the West End of London for the purpose of introducing French wines only to the British public at FRENCH TRADE prices; and the members of that association being proprietors of the most esteemed growths in France, the Nobility, Gentry and Families patronising such wines will become assured of their genuineness. THE EMPRESS PORT 20s. per dozen. Sent free, bottles included, to any British Railway Station on receipt of an order on Charing Cross Post Office for 22s. 6d. payable to A. Rephe, Director. THE EMPRESS PORT is pure grape, of first class quality, and delicious taste, the very wine for family consumption. CHAMPAGNE equal to Moet's 42s. SPARKLING BURGUNDY (" The Glorious Bumper ") at 48s. per dozen. Pure CLARETS from 16s. to 48s. per dozen."

REVIEWS

Atkin's Encyclopaedia of Court Forms in Civil Proceedings. Second Edition. Editor-in-Chief: Rt. Hon. LORD EVERSHED, Master of the Rolls. Volume Thirteen: Coroners, Costs, County Courts. pp. xxvii and (with Index) 294. Introductory volume (free to subscribers), pp. lxv and (with Index) 157. 1961. London: Butterworth & Co. (Publishers), Ltd. £3 8s. per volume.

Many of us, in the solicitors' branch of the profession, will confess, and without any desire of regeneration, to being of a practical turn of mind in matters legal. We think nice points anything but "nice." If a moot question is not to remain as a blot on the law, then the ecstasy aroused by its contemplation must be quickly dissolved into a consideration how best to have it determined. And we are in the best company, it appears. "I have been persuaded," writes Lord Evershed in his foreword to the second edition of Atkin's Civil Forms, "of the error of treating procedure as the poor relation of our substantive law, hardly deserving the study of a serious lawyer."

In our arrogance, yet respectfully, we solicitors might have put it higher. No one can claim to be a serious practising lawyer who neglects such study. To take an illustration prompted by a perusal of the new vol. 13 of Atkin, anybody can discover by reference to Halsbury that the High Court has power, for cause shown, to quash a coroner's inquisition. But the solicitor is hardly ready to practise in the full sense until he has the means, if he should be so instructed by an interested party, of setting about the obtaining of the Attorney-General's fiat on a carefully drawn memorial setting out the facts and supported both by a statutory declaration in verification and by an affidavit of the applicant subsequently filed. Who shall say that a book such as Atkin, which guides the solicitor through these practical steps, explaining them in detail and providing precedents of the forms required, is of less account to the profession than a mere statement, however complete, of the rights of the matter?

Like other multivolume works from the same publishers, the new edition of Civil Forms is to be published over a period. But the forty-one volumes are not to appear in numerical order. All that is available now in its final form is vol. 13, dealing with, the titles "Coroners," "Costs" and "County Courts." In addition, partly prefatory in function and partly by way of a kind of resident companion to the later volumes as they appear, there is published in a temporary binding an Introductory Volume containing some useful explanatory matter, tables of the rules of court keyed to all the volumes, prospective as well as published, and the title "Actions" in a provisional form. This title deals with general High Court procedure and, together with the title "County Courts" in vol. 13, will serve as a framework for much of the matter contained in the more specialised titles.

Among the volumes next to be published are those covering over thirty titles out of the total of nearly one hundred and fifty into which the whole work will be divided. Subjects to be dealt with in volumes published during the present year or shortly afterwards include Affiliation Proceedings, Appearance, Contempt of Court, Gaming and Wagering, and Legal Aid. The object of this apparently aberrant publication schedule is said to be to enable account to be taken as soon as possible of revisions in the rules of court which are now pending.

The full name of the work is now Atkin's Encyclopaedia of Court Forms in Civil Proceedings, the words "and Precedents" having been dropped since the first edition. The gain in conciseness is not dramatic, and as a matter of accurate description it might have been as well to retain the word "Precedents." For from the start Atkin has set out to give more than the bare forms to be used in court work. More often than not the skeleton is clothed by the various eminent contributors with specimen flesh, leaving the practitioner only to pump in the blood (tapped, no doubt, from his client).

But only a few of the possible permutations of circumstances can be provided for in any precedent. To use the forms intelligently the reader must have present to his hand and mind an account of the relevant procedure. Atkin provides this in the form of a narrative commentary, with footnote references to rules and cases, which in some cases occupies nearly as much space as the forms, and which may well be regarded as one of the major virtues of the work. Years of battle against annotations split into snippets appended to individual rules (and as often as not repeated under other rules) in the manner of the conventional law book are seen as so much wasted life once one perceives how clearly the procedure can be presented. The practice sections are supplemented by Procedural Tables, in a form which these publishers seem not to have used before, listing the steps to be taken in the course of a matter. The user of the book would readily forgive some duplication with the practice sections for the sake of this graphic presentation. So skilful is the division of the material, however, that there is surprisingly little repetition.

A stylistic novelty, also of notable utility, is a simple system of cross-references to pages in the volumes not yet published. These are allotted distinctive numbers ready to be picked up in the preparation of future titles.

To return for a moment to the name of the work, there are several justifications for calling it an Encyclopaedia. It is to cover proceedings in many courts and before many tribunals, in accordance with an impressive list given in the Introductory Volume. Not all of them have titles to themselves—for instance, it is apparently proposed to set out the forms for use in connection with Independent Schools Tribunals under the heading "Appeals" in vol. 5, and those for the Road and Rail Appeal Tribunal in vol. 39 under "Transport." But those courts and tribunals of a more general jurisdiction, such as the Salford Hundred Court of Record, and even the Norwich Guildhall Court, will be individually treated.

The detail in the titles is comprehensive, too. The publishers tell us that the object is to include not merely forms in ordinary use, but also every type of proceeding, however obscure and specialised. Several of the forms of order and certificate in the title "Costs" seem to have been inserted in pursuance of this aim, in particular a fascinating form of Associate's certificate for use where the plaintiff's leading counsel is absent on circuit and his junior, after unsuccessfully applying for adjournment, declines on instructions to open the case! A number of Chancery costs orders are a good deal more realistic, founded as they are on orders actually made in unreported cases.

Volume 13 is handsomely produced, and will certainly whet the appetite of the profession. Practitioners all over the country will look forward with interest over the next few years to seeing the fulfilment of the arduous task, now auspiciously begun, of modernising one of the most useful of the tools of its trade.

Oyez Practice Notes No. 32: Weaving's Notes on Bankruptcy Practice and Procedure in County Courts. Third Edition. By THOMAS STANFORTH HUMPHREYS. pp. 48. 1961. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

The third edition of Weaving's Notes on Bankruptcy Practice and Procedure in County Courts follows generally the familiar and convenient form of its predecessors. The only substantial change is that in this edition the subject of jurisdiction is dealt with in the first section instead of at the end. The major alteration in text is in the section dealing with appeals, which is now re-drawn to take into account the alterations made by the Bankruptcy (Amendment) Rules, 1956, and the Rules of the Supreme Court (Appeals), 1955, which reconstructed R.S.C., Ord. 58.

References to a number of recent cases have been added, and the list of bankruptcy forms deleted. The precedent of a petitioning creditor's solicitor's bill of costs has been amended, and it will be seen that it is not drawn in accordance with App. 2, a matter on which practitioners seem to have been in some doubt in spite of the clear wording of para. 2 of Sched. II to the Rules of the Supreme Court (No. 3), 1959.

This is a most useful little book. The only criticism that can be made is that, in the case of a book that is destined to be handled as much as this is, it is a pity that the old canvas cover has been replaced by a paper one.

NOTES OF CASES

These notes are published by arrangement with the Council of Law Reporting. Except in respect of those marked *, full reports of the judgments, revised by the judges, will shortly appear in the Weekly Law Reports. A list of cases reported in today's issue of "W.L.R." is set out at the end of these notes.

Case Editor: J. D. PENNINGTON, Esq., Barrister-at-Law

Judicial Committee of the Privy Council

CEYLON: TESAWALAMAI: PRE-EMPTION: PRINCIPLES APPLICABLE

Mangaleswari *v.* Selvadurai

Lord Morton of Henryton, Lord Radcliffe, Lord Denning, Lord Morris of Borth-y-Gest and the Rt. Hon. L. M. D. de Silva
26th April, 1961

Appeal from the Supreme Court of Ceylon.

The appellant and her father, the first respondent, inherited in 1935 certain land as co-owners in equal shares. In 1937 the first respondent sold his half-share to the second respondent. The appellant, who did not become aware of the sale until January, 1950, shortly thereafter, and while still a minor, brought an action to enforce a right of pre-emption under the law of Tesawalamai, which was applicable to the rights of the parties, in respect of the undivided half-share sold by her father, and asked that the conveyance to the second respondent should be set aside and her father ordered to execute a deed of transfer in her favour on her bringing into court a sum equal to the consideration paid by the second respondent. The district judge entered judgment in her favour and pursuant thereto she deposited Rs. 1,500 in court and a further sum of Rs. 1,500 as compensation for improvements. An appeal from that decision was allowed by the Supreme Court of Ceylon and the appellant's action dismissed on the basis that in *Velupillai* v. *Pulendra* (1951), 53 Cey. N.L.R. 472, it was held that "it is fundamental to the cause of action . . . that the pre-emptor should establish by positive proof that, had he in fact received the requisite notice of the sale, he would and could have purchased the property himself," and the Supreme Court held that the evidence in the present case showed that the appellant's estate at the time of the sale by her father was insufficient to purchase the property.

The Rt. Hon. L. M. D. DE SILVA, giving the judgment, said that the appellant's cause of action arose at the time when she first came to know of the sale. Notice to, or knowledge of, a natural guardian as interested as was the father here could not be imputed to the minor appellant. She had not to show that had she received the requisite notice she would and could have purchased the property. There was nothing in the statutory provisions of the Tesawalamai or in previous decisions of the Supreme Court of Ceylon to support the principle in *Velupillai* v. *Pulendra*, *supra*, nor was there anything in Roman–Dutch law, which was applicable where the Tesawalamai was silent, which supported the principle, and nothing in the Muslim law relating to pre-emption which directly or indirectly supported it. The principle did not form part of the law of Ceylon. Appeal allowed and decree of the district court restored.

APPEARANCES: *Stephen Chapman*, Q.C., and *John Stephenson*, Q.C. (*Lee & Pembertons*); *Gilbert Dold* and *J. A. Baker* (*A. L. Bryden & Williams*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

Court of Appeal

HUSBAND AND WIFE: ALIMONY PENDING SUIT: WIFE RECEIVING NATIONAL ASSISTANCE BENEFIT: COURT'S DISCRETION TO DISREGARD

Slater *v.* Slater

Hodson, Holroyd Pearce and Upjohn, L.JJ. 20th July, 1960

Appeal from Marshall, J.

A wife petitioner in a suit for divorce, with no income other than National Assistance benefit of £2 19s. per week, was granted by a registrar alimony *pendente lite* of £2 5s. per week against the husband, whose income was about £500 per annum. The husband appealed from the registrar's order, and his appeal was dismissed by Marshall, J. The husband appealed.

HOLROYD PEARCE, L.J., said that the sole point of the appeal was whether the order was wrong in principle in failing to take into account the National Assistance benefit received by the wife and failing, in consequence, to refuse any alimony *pendente lite*. The court had a wide and unfettered discretion, on such an application, to do what it thought just. Although cases in which National Assistance benefit received by a wife was taken into account were likely to be the exception and not the rule, it was a matter for the court in each particular case. It would be wrong to interfere with the discretion of the judge in the present case, and the appeal should be dismissed. Appeal dismissed with costs.

APPEARANCES: *Ingram Poole* and *Mrs. Glynne Bremner* (*Gibson & Weldon*, for *B. A. Greenwood & Co.*, Poole); *Bryan Anns* (*Thursfield & Adams*, Kidderminster).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law] [2 W.L.R. 685

HUSBAND AND WIFE: ARREARS OF MAINTENANCE: ENFORCEMENT: JURISDICTION OF DIVORCE COURT TO GARNISH

W *v.* W

Holroyd Pearce, Harman and Davies, L.JJ.
24th February, 1961

Appeal from Phillimore, J.

A wife whose husband was in arrear with maintenance payments issued a summons for an order garnishing the husband's bank account. The husband appeared under protest and submitted to the registrar, who had made ex parte an order nisi that the Divorce Court had no jurisdiction to make a garnishee order. The registrar referred the summons to a judge, who made the order absolute. The husband appealed.

HOLROYD PEARCE, L.J., said that the Supreme Court of Judicature Act, 1873, by ss. 5 and 16, conferred on the judges of the Court for Divorce and Matrimonial Causes all the powers hitherto held by the superior courts of common law, which included the power to make garnishee orders. The Supreme Court of Judicature Act, 1875, contained, in s. 17, provision for the making of rules of court, which applied to the Court for Divorce and Matrimonial Causes. One of those rules was Ord. 45, relating to the procedure for garnishee proceedings. The Supreme Court of Judicature (Consolidation) Act, 1925, repealed and re-enacted the provisions of the Acts of 1873 and 1875. Nothing contained in the 1925 Act altered the position in any material respect, and the judge was right in saying that, under it, jurisdiction remained in the Divorce Court to make garnishee orders. The appeal would be dismissed.

APPEARANCES: *Joseph Jackson* (*Michael Fox & Co.*); *R. J. S. Harvey* (*Wright & Bull*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

WHETHER TRACTOR DRAWING TRAILER "CONSTRUCTED FOR HAULAGE"

T. K. Worgan & Son, Ltd. *v.* Gloucestershire County Council

Lord Evershed, M.R., Upjohn and Pearson, L.JJ.
2nd March, 1961

Appeal from Gloucester County Court.

The plaintiff sought a declaration that tractor vehicles used for hauling trailers loaded with felled timber on the public

roads were chargeable to excise duty under s. 4 (2) (*f*) of the Vehicles (Excise) Act, 1949, as haulage vehicles and not under s. 5 (2) as goods vehicles drawing trailers.

LORD EVERSHED, M.R., said that if a vehicle was brought fairly and squarely within s. 4 (2) (*f*) because it was being used as it was constructed, for haulage solely, then it was outside the scope of the definition of "goods vehicle" in s. 27, and the phrase in the definition "conveyance of goods" did not extend to purely haulage operations. The Act clearly distinguished between haulage and carriage and on the facts these vehicles came within s. 4 (2) (*f*) and were used for haulage solely.

UPJOHN, L.J., delivered a concurring judgment.

PEARSON, L.J., agreed.

APPEARANCES: *J. E. M. Irvine* (*Field, Roscoe & Co.*, for *Guy H. Davis*, Gloucester); *F. Blennerhassett* (*J. Foley Egginton & Co.*, Sutton Coldfield).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

AGRICULTURAL HOLDING: LAND USED FOR TRADE OR BUSINESS: GRAZING LAND FOR RIDING-SCHOOL HORSES: "SIX MONTHS PERIODS": WHETHER SPECIFIED PERIOD LESS THAN A YEAR

Rutherford *v.* Maurer

Ormerod, Willmer and Danckwerts, L.JJ.

21st April, 1961

Appeal from Haywards Heath County Court.

A five-acre field was rented by a riding school as grazing land for horses used in connection with the school under an agreement contained in a document dated 18th February, 1959, which stated "£6 for 6 months. Let . . . for grazing for 6 months periods . . ." On 28th December, 1959, by a notice in writing, the owner purported to revoke the licence to use the field, giving six months' notice. The school proprietor claimed that the notice to quit was invalid as she held an agricultural tenancy. She continued to use the field for grazing her horses, removing a barrier erected by the owner to prevent her from so doing. After the death of the owner her executors sought a declaration in the county court that the school proprietor was not entitled to graze her horses in the field, an injunction restraining her from so doing, and damages for trespass, contending that her licence to use the field was for grazing horses for the purpose of the riding school and not for the purpose of an agricultural business; was for a period of six months; and had been revoked by the notice of 28th December, 1959. The school proprietor contended that the agreement of 18th February, 1959, constituted a full yearly tenancy of an agricultural holding as defined in s. 1 (2) of the Agricultural Holdings Act, 1948; alternatively, that the wording of the agreement was such as to exclude the letting from the proviso to s. 2 (1) of the Act and that the notice of 28th December, 1959, was invalid and of no effect. She counter-claimed for a declaration that she was entitled to the protection of the Act. The county court judge held that the words "a trade or business" in s. 1 (2) of the Act meant an agricultural trade or business and that the school proprietor had not a contract of tenancy of agricultural land, but he held also that the agreement constituted a letting for twelve months certain and did not come within the proviso to s. 2 (1). He granted the injunction claimed and dismissed the counter-claim. The school proprietor appealed and the executors cross-appealed.

ORMEROD, L.J., said that he did not agree with the first conclusion of the county court judge. There was no doubt that the field was used for agricultural purposes because it was used for grazing. The question was: Was it used for the purposes of "a trade or business" within the meaning of s. 1 (2) of the Act? On their clear meaning those words meant what they said and could not be qualified or narrowed in their application by the use of a term like "agricultural." Although to put the natural construction on the words might result in anomalies, it did not follow that the natural construction should not be adopted. The construction for which the appellant contended was the correct one. As to the issue raised in the cross-appeal that in any event this could not be an agricultural tenancy because of the proviso to s. 2 (1) of the Act, when construing a document of this kind one must have regard to the actual words of the document. He agreed with the view taken by the county court judge that the use of the words "for six months periods" in the document led to the conclusion that the letting was for twelve months certain and not for a specified period of a year. He would allow the appeal but would disallow the cross-appeal. Injunction discharged.

WILLMER and DANCKWERTS, L.JJ., delivered concurring judgments. Appeal allowed. Cross-appeal dismissed.

APPEARANCES: *Patrick Garland* (*Curwen, Carter & Evans*, for *Montague Williams & Piper*, Hurstpierpoint); *Stewart Newcombe* (*Ralph Bond & Rutherford*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

DIVORCE: CUSTODY OF INFANTS: APPEAL: ADDUCING FURTHER EVIDENCE: APPLICABILITY OF RULES

***O'Toole *v.* O'Toole**

Ormerod, Willmer and Danckwerts, L.JJ. 24th April, 1961

Motion for leave to adduce further evidence.

The mother of two infants, aged seven and six respectively, having lodged notice of motion of appeal from a judge's order granting the legal custody of the children to their father, her former husband, sought leave to adduce, at the hearing of the appeal, evidence which was not before the judge at the hearing of the custody summons.

ORMEROD, L.J., said that the rules governing the admission of fresh evidence on an appeal were stated by the Court of Appeal in *Ladd* v. *Marshall* [1954] 1 W.L.R. 1489, as follows: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use in the court below; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be apparently credible, though it need not be incontrovertible. Although those rules were strictly observed, his lordship was doubtful whether, in a case concerning the custody of infants, they should be applied at all, since in custody proceedings the welfare of the children was the paramount consideration. In the present case, no sufficient indication had been given to their lordships to enable them to say that the evidence sought to be adduced would have affected the judge's decision. The court had not been given copies of the affidavits of the further evidence. Having regard to the scanty information given to the court, the application should be refused.

WILLMER and DANCKWERTS, L.JJ., delivered concurring judgments. Motion dismissed.

APPEARANCES: *Peter Foster*, Q.C., and *H. S. Law* (*Rowe and Maw*); *Geoffrey Lawrence*, Q.C., and *James Comyn*, Q.C. (*Clifford-Turner & Co.*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

INCOME TAX: SALE OF "KNOW-HOW": LUMP SUM: CAPITAL OR INCOME

Inland Revenue Commissioners *v.* Rolls Royce, Ltd.

Holroyd Pearce, Upjohn and Donovan, L.JJ.

26th April, 1961

Appeal from Pennycuick, J. ([1960] 1 W.L.R. 720; 104 SOL. J. 566).

A company agreed to provide China with technical knowledge, plans, a licence and facilities for interchange of staffs

so that Rolls Royce engines could be manufactured in China in return for the payment of royalties and a capital sum of £50,000. The company subsequently entered into similar agreements with other countries and received lump sums. On the question whether the lump sums were to be included as trading receipts on revenue accounts or as capital, Pennycuick, J., upholding the decision of the Special Commissioners, held that the sums represented the receipt of capital. The Crown appealed.

HOLROYD PEARCE, L.J., said that the China agreement could not be considered as if it stood alone. It had to be considered in the light of surrounding circumstances and subsequent events did throw light on it. The mere fact that the imparting of technical knowledge was one of the considerations (and probably the major one) for the payment of the lump sums was not enough to take the sums out of the category of trading receipts. Considerations as to the type of knowledge and the reasons for which it was imparted were not conclusive but had cumulative weight. His lordship felt compelled to the conclusion that the receipt of the sums in question was part of the annual profit or gain accruing from the company's trade. The only reasonable conclusion on the facts found by the Special Commissioners was that the sums were trading receipts on revenue account.

UPJOHN and DONOVAN, L.JJ., delivered concurring judgments. Appeal allowed.

APPEARANCES: *Roy Borneman*, Q.C., and *Alan S. Orr* (*Solicitor, Inland Revenue*); *F. Heyworth Talbot*, Q.C., and *C. N. Beattie* (*Claremont, Haynes & Co.*).

[Reported b Miss C. J. ELLIS, Barrister-at-Law]

HUSBAND BUYS CAR ON HIRE-PURCHASE FOR WIFE: WIFE'S INTEREST

Spellman *v.* Spellman

Ormerod, Willmer and Danckwerts, L.JJ. 27th April, 1961

Appeal from Willesden County Court.

The parties to these proceedings under s. 17 of the Married Women's Property Act, 1882, were married on 24th March, 1957, but relations between them were bad. There had been some idea that the purchase of a car by the husband for his wife might save the marriage from breaking up, and on 19th May, 1960, the husband entered into a hire-purchase agreement in respect of an Austin Healey Sprite car. The car was delivered to the matrimonial home; the wife saw it through the window and asked if that was the car he had bought for her. He replied that it was. The car registration book was put by the husband in the name of the wife. Notwithstanding the arrival of the car, the parties separated a few weeks later, the husband taking the car, the wife keeping the registration book. On an application to determine the rights of the parties in respect of the car, the county court judge held that the wife had no interest in the car or in the hire-purchase agreement and ordered her to return the registration book to the husband. The wife appealed.

DANCKWERTS, L.J., giving the first judgment, said that the hire-purchase agreement was in the usual form, requiring the husband to pay instalments under it for two years and to retain possession of the car. There was also a prohibition against any assignment of the contract or of the benefit of it. The wife had originally claimed there was a gift of the car to her by the husband, but that was impossible because the title to the car remained in the hire-purchase company and it was not his to give. There might have been an equitable assignment by the husband of his rights under the agreement, for there could be an oral equitable assignment of his rights under the agreement without any consideration being given, and the prohibition against assignment was not necessarily fatal. But it was impossible to spell out an equitable assignment in this case, and there was not sufficient evidence from which such an intention could fairly be collected. The promise to buy the car and the putting of the registration book in the wife's name did not amount to an equitable assignment. Nor was there any declaration of trust by the husband. Moreover, the proper conclusion was that there was no intention to create legal relations. The whole transaction was no more than an informal dealing as between husband and wife. It was common in daily life for husbands and wives to make domestic arrangements for their own convenience, but such arrangements did not involve the realisation of legal relationships. The appeal would be dismissed.

ORMEROD, L.J., agreed.

WILLMER, L.J., said that he agreed that the appeal should be dismissed, but he was not persuaded that the husband could in any event have made an equitable assignment in view of the prohibition in the agreement against assignment. Appeal dismissed. Order for return of registration book to husband.

APPEARANCES: *Margaret Puxon* (*Willis & Willis*); *Neil Taylor* (*John Morris Wilkes & Co.*).

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law]

VENDOR AND PURCHASER: SOLICITOR ACTING FOR BOTH PARTIES: WHETHER HIS MEMORANDUM SUFFICIENT

Gavaghan *v.* Edwards

Ormerod, Willmer and Danckwerts, L.JJ. 28th April, 1961

Appeal from Gloucester County Court.

The plaintiff, desirous of selling his house, was introduced to the defendant some time during April, 1958. On 6th May, 1958, they met at the plaintiff's house and agreed on a price of £4,500, which was a much better price than the plaintiff had expected. The plaintiff said that he would see his solicitor and it was suggested that the same solicitor be employed by the defendant. On 7th May, 1958, the plaintiff obtained a standard printed form of agreement and completed the blank spaces in it. It was signed by both parties over a 6d. stamp. Clause 2 provided that it should be subject to The Law Society's Conditions of Sale, unless they were varied by or inconsistent with the terms of the agreement. Clause 6 provided that the date for completion was to be agreed between the parties. The plaintiff told his solicitor that the defendant wished him to act as his solicitor too. The solicitor wrote a letter to the defendant to that effect and stating that he would act for the defendant. No reply was ever received from the defendant. Prior to 15th May, 1958, the parties met and agreed on 31st January, 1959, as the date for completion. A letter from the plaintiff to his solicitor referred to this agreement. There was a note endorsed on a copy of the letter by the solicitor that the defendant had phoned and confirmed the above. The county court judge held that the printed form of agreement did not constitute a completed contract, but that the printed agreement and the note endorsed on the letter by the solicitor constituted a written memorandum of the contract within s. 40 of the Law of Property Act, 1925. The defendant appealed.

DANCKWERTS, L.J., giving the first judgment, said that the issue was whether a solicitor who acted for both parties could have authority to sign a memorandum on their behalf for the purposes of s. 40 of the Law of Property Act, 1925. It was a fair inference that the solicitor was accepted by the defendant as his solicitor after the letter to the defendant stating that he would act for the defendant. The mere fact of the solicitor and client relationship did not give the solicitor by implication any authority to sign a memorandum, and the matter depended on the facts of each particular case. The striking feature of this case was that there would have been a completed contract if it were not that the date of

completion had been left undetermined. When, therefore, the defendant phoned to confirm the date of completion, the solicitor having been accepted by him, it must be assumed that he was given authority to complete the necessary memorandum. This might not have been the case if there had been any conflict of interests. It was his view that a solicitor ought not to act for both parties, because the interests of his clients might conflict. The appeal would be dismissed.

ORMEROD and WILLMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *J. H. Ellison* (*Devonshire & Co.*, for *Bretherton & Sons*, Gloucester); *M. R. Hoare* (*Kinch and Richardson*, for *T. Warren-Green*, Cheltenham).

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law]

Chancery Division

WHETHER ILLEGITIMATE CHILD CAN TAKE UNDER GIFT TO "CHILDREN"

***In re Salmon's Will Trusts**

Wilberforce, J. 25th April, 1961

Adjourned summons.

A testatrix made her will on 13th December, 1951, and thereby gave all her residuary estate to "the children of my late brother [E.S.]." She died in 1957. Her brother E.S. was born in 1869 and shortly before 1896 he emigrated to Brazil, where he lived for the rest of his life. He died in 1947. He never married and had no legitimate issue but he had one illegitimate daughter born in 1896, the first defendant. It was clear that the first defendant was in fact the illegitimate child of E.S. and that he never had any other children, and that the testatrix knew from direct communication with E.S. that the first defendant was his illegitimate child. The plaintiff, the executor of the testatrix, took out an originating summons to determine whether the first defendant could take under the gift in the will or whether the residue was undisposed of.

WILBERFORCE, J., said that the general rule was well known to be that "children" prima facie meant legitimate children and the relevant exception was that a gift to the child of a deceased person necessarily referred to children living at the date of the will and therefore, where the deceased person had only illegitimate children and they were known to the testator, those illegitimate children could take. The testator must know, therefore, that the relevant person was dead, that he had children, and possibly that they were illegitimate children. All those conditions were satisfied in the present case. Counsel for the next of kin had argued that the use of the plural "children" in the will indicated that the testatrix was not directing her intention to the first defendant but was possibly directing her intention to a legitimate child who was capable of existing. Further, that where the plural was used, illegitimate children could only take if it was affirmatively proved that the testator knew that there were no legitimate children in existence. Was that the correct legal test? There were two possible positions where the testator knew of the existence of an illegitimate child: (1) it had to be shown that he also knew that there were no legitimate children; and (2) it had to be shown that he had no reason to think that there were such. His lordship found that the testatrix here must have known that there were no legitimate contenders. The rule to be extracted from the cases did not go so far as to require that a testator should have positive knowledge that a child was an illegitimate child or that he should know that the relevant deceased person had no legitimate child. Accordingly, the first defendant was entitled to take under the residuary gift.

APPEARANCES: *Donald Ziegler* (*Collyer-Bristow & Co.*); *E. I. Goulding*, Q.C. (*Stilgoes*); *John Knox* (*Collyer-Bristow and Co.*).

[Reported by Miss PHILIPPA PRICE, Barrister-at-Law]

Queen's Bench Division

DRUNK IN CHARGE: ACCUSED SO DRUNK THAT NO LIKELIHOOD OF DRIVING

***John *v.* Bentley**

Lord Parker, C.J., Gorman and Salmon, JJ. 20th April, 1961

Case stated by Bedford Quarter Sessions.

The respondent was convicted before justices for that he, being in charge of a motor vehicle, but not driving the vehicle, was unfit to drive in that he was under the influence of drink to such an extent as to be incapable of having proper control of a motor vehicle, contrary to s. 9 of the Road Traffic Act, 1956. He appealed against his conviction to quarter sessions, who found that three men, one of whom was the respondent, went out on a drinking expedition. They drove from Dunstable to Eaton Bray in a vehicle belonging to the respondent's employers in order to get dead drunk, and an agreement was made that, if they became incapable through drink, they would either stay the night at the public-house or find some other transport to take them back to their homes. They proceeded to get dead drunk and one man did stay at the public-house. The respondent and the other man were found with the vehicle back in Dunstable at 11 p.m. that night. The respondent had not driven the vehicle, the other man having apparently taken the ignition keys from the respondent's pocket. The respondent was found on the floor of the cab, vomiting. He was taken to the police station and was found to be dead drunk. He slept all through the medical examination and the doctor could not wake him. The doctor's evidence was that he had never seen a man so drunk. At 10 a.m. the next day the respondent was found to be coherent. Quarter sessions allowed the appeal, holding that, although they were satisfied that the respondent was in charge of the vehicle, he had proved on the balance of probabilities that at the material time there was no likelihood of his driving so long as he remained unfit to do so. The prosecutor appealed.

LORD PARKER, C.J., said that the defence under the proviso to s. 9 of the Act of 1956 was intended to be directed to an entirely different set of circumstances, where, for example, a man was in his home in bed and unlikely to drive while unfit. The words of the proviso, however, were very wide and the defence was open. Quarter sessions had found that the respondent had been in a drunken stupor, had remained in it for a matter of hours and was most unlikely to be able to drive at all for a considerable time. His lordship was far from saying that on the facts he would have come to the same conclusion as quarter sessions, but there was evidence upon which they could have come to that conclusion and it could not be said to be an unreasonable conclusion.

GORMAN and SALMON, JJ., agreed. Appeal dismissed with costs.

APPEARANCES: *Eric Stockdale* (*Michael Wynter & Co.*, Luton); *Anthony Abrahams* (*Machin & Co.*, Dunstable).

[Reported by A. D. RAWLEY, Esq., Barrister-at-Law]

Probate, Divorce and Admiralty Division

PRACTICE: STAY OF PROCEEDINGS: ADMIRALTY

Cargo Lately Laden on Board the *Soya Lovisa* (Owners) *v. Soya Margareta* (Owners); The *Soya Margareta*

Hewson, J. 30th May, 1960

Motion.

The plaintiffs, an Italian company, chartered the defendants' vessel, *Soya Lovisa*, to take a cargo of solvents from Texas City to Venice. The charterparty provided that any dispute

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(*Continued on p. xix*)

should be settled by arbitration in London. The *Soya Lovisa* discharged her cargo in Venice in August, 1958. The plaintiffs alleged that the cargo had been contaminated whilst on board. The defendants denied this. In April, 1959, the plaintiffs issued a writ *in personam* against the defendants in the Court of Venice, and in June, 1959, they claimed arbitration in London. Later in June, 1959, the plaintiffs, having failed to obtain security from the defendants, issued a writ *in rem* in the High Court against the defendants' vessel, *Soya Margareta*, and arrested that vessel, which was in this country. In order to release the vessel, the defendants undertook to provide security in the sum of £300,000. In April, 1960, the defendants moved to set aside the writ in the Admiralty action or for an order staying all further proceedings in that action, on the ground that it would be oppressive and vexatious to allow the plaintiffs to proceed with three separate actions in respect of the same claim.

HEWSON, J., said that, although at first sight it seemed that the plaintiffs had instituted an excessive number of actions in respect of their claim, the procedure in this court by way of an action *in rem* was the only one of the three proceedings which ensured security for this large claim. It was for the defendants in the motion to establish that the action in the High Court was, in all the circumstances, vexatious. That they had failed to do. There were three ways in which the case might be dealt with. First, the plaintiffs might be put to their election either to sue here or in Italy; secondly, the proceedings here might be stayed; or thirdly, the plaintiffs might be restrained from prosecuting their proceedings in Italy. The plaintiffs had taken up the attitude that this dispute could be more easily and expeditiously decided in the Admiralty Court than by arbitration; they had also shown willingness throughout to abandon the proceedings in Italy, but it was clear from the evidence that under Italian law they were unable to abandon those proceedings without the concurrence of the defendants. It seemed to his lordship, therefore, that, the plaintiffs having indicated their election, the third alternative should be adopted, and an injunction granted restraining them from prosecuting their claim in Italy. The defendants' motion would be dismissed with costs.

APPEARANCES: *A. W. Roskill*, Q.C., and *Basil Eckersley* (*Crawley & de Reya*); *A. A. Mocatta*, Q.C., and *R. A. MacCrindle* (*William Crump & Son*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law] [1 W.L.R. 769

DIVORCE: WELFARE OF CHILDREN

***Cushway *v.* Cushway and Flood**

Wrangham, J. 26th April, 1961

Summons adjourned into open court.

On 29th June, 1960, a husband was granted a decree nisi of divorce, and an order for the custody of the two children of the family, aged fourteen and six respectively, the wife being given care and control of the younger child. On 4th October, 1960, the decree nisi was made absolute. No record appeared on the court minutes that the court was satisfied that the arrangements for the care and upbringing of the children were satisfactory, as required by s. 2 of the Matrimonial Proceedings (Children) Act, 1958. A summons was issued on behalf of the husband for an order that the decree absolute be set aside, that the court should certify that the arrangements for the children were satisfactory, and that leave be granted to apply forthwith for the decree nisi to be made absolute.

WRANGHAM, J., said that in accordance with the recent decision of Scarman, J., in *B* v. *B*, *ante*, p. 301, a decree absolute obtained without the requirements of s. 2 of the Matrimonial Proceedings (Children) Act, 1958, being complied with was a nullity. There was no record in the court minutes showing that that section was complied with in the present case. That might be due to a mistake in the minutes, which was capable of correction under the slip rule, or to the fact that the judge was not satisfied in respect of the matters required by the section. The proper course was to apply to the judge who heard the suit, in order to ascertain whether he had been satisfied with regard to the children, in which case he could rectify the court minutes, or, if he had not been satisfied in that regard, it would be for him to consider what steps should be taken. There would be no order on the summons, save that it be referred to the trial judge.

APPEARANCES: *Michael Hutchison* (*Lewis, Foskett & Marr*); *Raphael Tuck* (*Charles & Co.*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

Court of Criminal Appeal

TWO MISDIRECTIONS: PROVISO: WHETHER APPLICABLE

***R. *v.* Britton**

Lord Parker, C.J., Streatfeild and Salmon, JJ.

24th April, 1961

Appeal against conviction and sentence.

The defendant was convicted of being in possession without lawful excuse of forged National Health Insurance stamps knowing them to have been forged, contrary to s. 8 (2) (*b*) of the Forgery Act, 1913. The stamps were found in a motor car driven by the defendant. His defence was that the stamps had been placed in his motor car without his knowledge in order to incriminate him. He appealed on the ground that the jury were directed that it was for the defendant to prove that he had a lawful excuse for being in possession of the stamps. On appeal, it was further contended that the jury had been misdirected on the question whether the defendant knew that the stamps had been forged.

LORD PARKER, C.J., said that it had not been left to the jury whether the defendant had possession of the stamps in the sense that he knew that they were in the car. Had that been the only misdirection, the court might have applied the proviso to s. 4 (1) of the Criminal Appeal Act, 1907. But the jury had also been told that the defendant had admitted that he knew the stamps were forged, although his evidence was to the contrary. The court felt that to apply the proviso in these circumstances would create an unfortunate precedent because it would mean applying it twice over, first in regard to the misdirection on possession and secondly to that on knowledge of forgery. Accordingly, the court reluctantly quashed the conviction.

APPEARANCES: *W. R. Steer* (*Registrar, Court of Criminal Appeal*); *I. H. Morris Jones* (*Harston & Atkinson*, Carlisle).

[Reported by Mrs. H. KELLY, Barrister-at-Law]

THE WEEKLY LAW REPORTS

CASES INCLUDED IN TODAY'S ISSUE OF THE W.L.R.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Carriage by Air Bill [H.C.] [25th April.
Home Safety Bill [H.C.] [25th April.
Hyde Park (Underground Parking) Bill [H.C.] [26th April.
Industrial and Provident Societies Bill [H.C.] [25th April.
Oaths Act, 1888 (Amendment) Bill [H.C.] [25th April.
Printer's Imprint Bill [H.C.] [25th April.
Private Street Works Bill [H.C.] [25th April.
Restriction of Offensive Weapons Act, 1959 (Amendment) Bill [H.C.] [25th April.
Sheriffs' Pensions (Scotland) Bill [H.C.] [26th April.

Read Second Time:—

Holy Trinity Brompton Bill [H.C.] [25th April.

Read Third Time:—

National Health Service Bill [H.C.] [25th April.
Shell Brazil Bill [H.C.] [25th April.
Winchester Cathedral Close Bill [H.C.] [26th April.

In Committee:—

Road Traffic Bill [H.L.] [27th April.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time:—

Finance Bill [H.C.] [25th April.

To grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with Finance.

Legal Profession (Qualification for Office) Bill [H.C.] [27th April.

To make provision with respect to the qualification for office of barristers who have been solicitors, and for purposes connected therewith.

Railways (Carriage of Mail) Bill [H.C.] [26th April.

To require railway authorities to give greater protection to the carrying of Her Majesty's mail.

Read Second Time:—

Berkshire and Buckinghamshire County Councils (Windsor-Eton Bridge, etc.) Bill [H.L.] [24th April.
Department of Technical Co-operation Bill [H.C.] [25th April.
London County Council (Money) Bill [H.C.] [24th April.
Republic of South Africa (Temporary Provisions) Bill [H.C.] [24th April.

Read Third Time:—

Allhallows Staining Churchyard Bill [H.L.] [24th April.
Rio Tinto Rhodesian Mining Limited Bill [H.L.] [24th April.

STATUTORY INSTRUMENTS

Burnham and District Water Order, 1961. (S.I. 1961 No. 771.) 5d.

Coal and Other Mines (Mechanics and Electricians) (Variation) Regulations, 1961. (S.I. 1961 No. 794.) 5d.

East Worcestershire Water (Evesham) Order, 1961. (S.I. 1961 No. 726.) 8d.

London-Edinburgh-Thurso Trunk Road (Berriedale Diversion) (Variation) Order, 1961. (S.I. 1961 No. 772 (S.47).) 5d.

London Traffic (40 m.p.h. Speed Limit) (No. 3) Regulations, 1961. (S.I. 1961 No. 722.) 5d.

London Traffic (Prescribed Routes) (Greenwich) Regulations, 1961. (S.I. 1961 No. 718.) 4d.

London Traffic (Prescribed Routes) (Southwark) (Amendment) Regulations, 1961. (S.I. 1961 No. 719.) 5d.

London Traffic (Prohibition of Cycling on Footpaths) (Amersham and Eton) Regulations, 1961. (S.I. 1961 No. 720.) 5d.

London Traffic (Prohibition of Cycling on Footpaths) (Coulsdon and Purley) Regulations, 1961. (S.I. 1961 No. 721.) 5d.

National Health Service (Appointment of Boards of Management—Consequential Provisions) (Scotland) Order, 1961, (S.I. 1961 No. 757 (S.44).) 5d.

Oxford-Northampton-Stamford-Market Deeping Trunk Road (Saint Martins, Stamford, Trunking) Order, 1961. (S.I. 1961 No. 761.) 4d.

Parking Places (City of London) (No. 1) Order, 1961. (S.I. 1961 No. 765.) 1s. 2d.

Parking Places (Shoreditch) (No. 1) Order, 1961. (S.I. 1961 No. 766.) 1s. 2d.

Road Vehicles (Period Licensing) (Variation) Order, 1961. (S.I. 1961 No. 774.) 4d.

School Premises (Standards and General Requirements) (Scotland) (Amendment No. 2) Regulations, 1961. (S.I. 1961 No. 769 (S.46).) 5d.

Sea Fisheries (Scotland) Byelaw (No. 60), 1961. (S.I. 1961 No. 758 (S.45).) 5d.

Sierra Leone (Constitution) Order in Council, 1961. (S.I. 1961 No. 741.) 2s. 4d.

South Staffordshire Water (Financial Provisions) Order, 1961. (S.I. 1961 No. 760.) 5d.

Stopping up of Highways Orders, 1961:—

County of Bedford (No. 4). (S.I. 1961 No. 754.) 5d.
City and County Borough of Birmingham (No. 3). (S.I. 1961 No. 728.) 5d.
County of Buckingham (No. 5). (S.I. 1961 No. 727.) 5d.
County of Chester (No. 3). (S.I. 1961 No. 748.) 5d.
County of Chester (No. 9). (S.I. 1961 No. 762.) 5d.
County of Essex (No. 7). (S.I. 1961 No. 733.) 5d.
County of Essex (No. 8). (S.I. 1961 No. 732.) 5d.
County of Kent (No. 3). (S.I. 1961 No. 734.) 5d.
County of Kent (No. 5). (S.I. 1961 No. 752.) 5d.
County of Lancaster (No. 13). (S.I. 1961 No. 775.) 5d.
City and County Borough of Leeds (No. 4). (S.I. 1961 No. 753.) 5d.
City and County Borough of Leeds (No. 6). (S.I. 1961 No. 763.) 5d.
County of Leicester (No. 3). (S.I. 1961 No. 755.) 5d.
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County of Salop (No. 4). (S.I. 1961 No. 749.) 5d.
County of York, West Riding (No. 12). (S.I. 1961 No. 750.) 5d.
County of York, West Riding (No. 13). (S.I. 1961 No. 764.) 5d.

Superannuation (Local Government and Overseas Employment) Interchange (Amendment) Rules, 1961. (S.I. 1961 No. 770.) 5d.

Wages Regulation (Coffin Furniture and Cerement-making) Order, 1961. (S.I. 1961 No. 773.) 8d.

Wages Regulations (Retail Drapery, Outfitting and Footwear) Order, 1961. (S.I. 1961 No. 759.) 1s. 2d.

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Congleton.—LOUIS TAYLOR & SONS, F.A.I., Chartered Auctioneers and Estate Agents, 21 High Street. Tel. 91.

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(*Continued on p. xx*)

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(*Continued on p. xxi*)

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Ramsgate.—LESLIE HOGBIN, F.R.I.C.S., Chartered Surveyor, Auctioneer, Valuer and Estate Agent, 50 Queen Street. Tel. Thanet 53222/3

SELECTED APPOINTED DAYS

April

21st Wages Regulation (Hat, Cap and Millinery) (England and Wales) Order, 1961. (S.I. 1961 No. 653.)

May

1st Betting and Gaming Act, 1960, remainder of Pt. I (except ss. 3, 6, 13, 14) and Sched. II; s. 29 (1) and Sched. IV; s. 29 (2) and Sched. V; s. 29 (3) and Sched. VI, Pt. II, save in so far as they relate to the Street Betting Act, 1906, s. 1 (3).

Betting (Licensed Offices) Regulations, 1960. (S.I. 1960 No. 2332.)

May (*continued*)

5th Wages Regulation (Coffin Furniture and Cerement-making) Order, 1961. (S.I. 1961 No. 773.)

8th Legal Aid and Advice Act, 1949, Pt. I, in connection with certain proceedings in courts of summary jurisdiction or quarter sessions (see p. 307, *ante*).

Legal Aid (Assessment of Resources) (Amendment) Regulations, 1961. (S.I. 1961 No. 555.)

Legal Aid (General) (Amendment) Regulations, 1961. (S.I. 1961 No. 556.)

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Compulsory Acquisition—Powers of London Electricity Board

Q. The London Electricity Board are seeking to buy from a client of ours a piece of land at the rear of his garden for the purpose of erecting on it a transformer enclosure. Our client has no wish to sell the land. Can the London Electricity Board exercise compulsory powers of acquisition, and if so what are the statutory provisions under which they are given these powers?

A. It seems that the London Electricity Board are able to exercise compulsory powers of acquisition, and these powers are conferred by s. 9 of the Electricity Act, 1947.

Highway Flooded—Loss of Innkeeper's Business

Q. A client owns a very old freehold fully licensed inn in a small remote hamlet. The hamlet is served by three roads, all of which have always been repairable by the highway authority. One leads to the nearest town 8 miles distant, one to the nearest village 3 miles distant and the remaining one to a small holiday resort 6 miles distant. For many years the first two of these roads have been flooded in the winter, often for two or three weeks at a time, so that motorists cease to use them. Our client can show a marked decline in his bar takings when these roads are flooded, which affects his livelihood seriously. The roads flood where they follow small river valleys which overflow, and the position is aggravated by the fact that the rivers are tidal. Over the years the local authorities have spent considerable sums in widening and deepening the river channels without calling on our client to contribute, but, although this has resulted in keeping the surface of the roads above water for longer periods, nevertheless for more than the last fortnight the two roads referred to have been impassable through flooding, and the takings in the inn have become negligible. The three roads run respectively west, north and east from the hamlet, and customers from the west and the north will not undertake the long drive round to approach the inn by the dry east road. What remedies has our client either to compel the proper authority to keep each road suitable for motor traffic or to claim compensation for the losses he sustains when the roads are impassable through flooding?

A. In our opinion the client has no remedies. At common law a highway authority cannot be held liable to pay damages for injury caused by mere neglect to carry out highway repairs. They are not liable in damages for non-feasance: *Cowley* v. *Newmarket Local Board* [1892] A.C. 345. *A fortiori* they will not be liable for not improving a road. See also *Burton* v. *West Suffolk County Council* [1960] 2 W.L.R. 745, where the county council had taken some steps to eliminate flooding from a highway but it still flooded to some extent, so that the plaintiff's motor car skidded on a patch of ice and he was injured; the Court of Appeal held that the county council were not liable. The common-law exemption from damages in respect of non-feasance is preserved by s. 298 of the Highways Act, 1959. Prior to the 1959 Act an indictment would be preferred in respect of neglect to maintain a highway, but this Act substituted a special procedure for enforcing the liability to maintain a highway: see s. 59. For the duty to maintain, see s. 44. But we do not consider that this road could be said to be out of repair for the purposes of these provisions. It appears to be in good repair and only subject to flooding by reason of the natural levels. What is required seems to us to be improvement rather than repair, and we know of no procedure whereby a highway authority can be forced to improve a road. Therefore we think there is no remedy in damages and no procedure for enforcing the required improvement.

Bailment—Removal of Wrecked Motor Vehicles under Police Instructions

Q. Clients of ours have a number of motor garages including recovery and repair facilities, and are frequently asked by the police or one of the motoring organisations to remove vehicles which have been damaged in accidents. We can find authority for the police to recover the costs of such removals from the owner of the vehicle, but not for the garage undertaking the work to recover the costs from the police. Is there any such authority? Frequently such vehicles stand for long periods upon our clients' premises, which are insufficient to provide covered accommodation for them, and in extreme cases can remain unclaimed. In cases where the vehicles have, for instance, had their windscreens knocked out, weather damage to the interior is frequently considerable. In your opinion are our clients liable in damages for this weather damage or any other incidental damage (e.g., by vandals) while the vehicles stand on their premises before any instructions for repair or the like are given? Presumably liability would arise in the event of instructions for repair being given to our clients and being accepted, and also presumably if they demanded a rent for the period during which the vehicles stand on their premises. We have advised our clients that we cannot see any basis upon which liability can arise for such damage until some form of contractual relationship is set up between the owner of the vehicle and our clients.

A. We have been unable to find any direct authority for the proposition that the garage undertaking the work of removal may recover the costs from the police, but where services are rendered on request and no amount is fixed for payment the court will allow a *quantum meruit* claim if the parties expressly or impliedly agreed that some payment was to be made: see, e.g., *Powell* v. *Braun* [1954] 1 W.L.R. 401, and *Foley* v. *Classique Coaches, Ltd.* [1934] 2 K.B. 1. It seems to us that this principle could be applied in this case. We are reluctant to accept the view that your clients are not liable for damages to vehicles standing on their premises, but we have been unable to find any direct authority which casts doubt upon this advice. However, if there is actual entry upon a thing and, taking the trust upon himself, a man "miscarries in the performance of his trust, an action will lie against him for that, though nobody could have compelled him to do the thing" (per Holt, C.J., in *Coggs* v. *Bernard* (1703), 2 Ld. Raym. 909). It is clear that your clients are not "involuntary bailees" (cf. *Lethbridge* v. *Phillips* (1819), 2 Stark. 544), and it could even be contended that the police were agents of necessity, especially where the owner of the vehicle is removed to hospital immediately after the accident.

NOTES AND NEWS

DOUBLE TAXATION—PAKISTAN

A double taxation agreement between Pakistan and the United Kingdom was signed on 24th April. The agreement relates to taxes on income and is expressed to take effect in the United Kingdom from 6th April, 1960, the date on which the previous agreement signed on 10th June, 1955, ceased to have effect. Before the agreement can take effect in the United Kingdom it will require the approval of the House of Commons.

Honours and Appointments

Mr. DAVID MACBETH MOIR CAREY, principal registrar of the Province of Canterbury, has been appointed legal secretary to Dr. Ramsey, the Archbishop-designate of Canterbury, from 21st June.

Mr. EDWARD WALTER EVELEIGH, Q.C., has been appointed Recorder of the borough of Burton-on-Trent.

Sir SYDNEY LITTLEWOOD has been appointed chairman of the Council for Professions Supplementary to Medicine.

Mr. OSWELL SEARIGHT MACLEAY has been appointed Deputy Chairman of the court of quarter sessions for the County of London.

Obituary

Mr. TOM WELLINGTON MENNEER, solicitor, of Ramsgate, died on 19th April, aged 62. He was admitted in 1927.

Mr. DAVID FRANCIS MORGAN, O.B.E., solicitor, of London, S.W.1, died on 24th April, aged 71. He was admitted in 1911, and was Commonwealth Commissioner of the Boy Scouts Association.

Mr. MERVYN PHIPPEN PUGH, D.S.O., M.C., solicitor, of Bromsgrove, died on 24th April, aged 67. Admitted in 1920, he was prosecuting solicitor for Birmingham from 1924 to 1958.

Sir ANDREW DENYS STOCKS, C.B., O.B.E., legal adviser and solicitor to the Ministry of Agriculture, the Commissioners of Crown Lands, the Tithe Redemption Commission and the Agricultural Land Commission, died on 27th April, aged 76.

Mr. HYMAN STONE, solicitor, of London, W.1, died on 21st April, aged 57. He was admitted in 1926.

Wills and Bequests

Mr. ALAN HERBERT HATTON, solicitor, of Warrington, left £82,237 net.

Mr. WALTER HYLTON JESSOP, solicitor, of Cheltenham, left £35,571 net.

Mr. GEORGE SHIPTON RUSSELL, retired solicitor, of Lichfield, left £116,328 net.

Mr. GEORGE LAWRENCE TALBOT, solicitor, of Yarmouth, left £19,164 net.

Mr. ERIC WILSON, solicitor, of Ashton-under-Lyne, left £48,546 net.

Societies

The 76th annual general meeting of the CHESTER AND NORTH WALES INCORPORATED LAW SOCIETY was held at County Hall, Chester, on Tuesday, 18th April, 1961, when 44 members attended and the following were appointed officers for the ensuing year: president, Mr. J. K. D. Roberts, of Chester; vice-president, Col. J. Douglas Porter, O.B.E., D.L., M.A., of Conway; hon. treasurer, Mr. H. L. Birch, M.B.E., of Chester; hon. secretary, Mr. J. C. Blake, of Chester. The following were appointed to serve on the Committee: Messrs. J. M. Carswell, of Chester, J. P. M. Whipp, of Northwich, H. Gordon Carter, B.A., of Bangor, and J. Humphrey Jones, LL.B., of Rhyl. The annual dinner, held on the evening of the same day, was a most successful event and 117 members and guests were in attendance. Appreciations were expressed at the quality of the after-dinner speeches, which were of a very high order. Guests included Mr. Francis Williams, Q.C. (Recorder of Chester), Mr. Denys T. Hicks, O.B.E., T.D., D.L. (President of The Law Society), The Right Reverend the Lord Bishop of Chester (Dr. G. A. Ellison), His Honour Judge Steel, Sir Leonard Stone (Vice-Chancellor, Chancery Court, Duchy of Lancaster), Prof. D. Seaborne Davies, M.A., LL.B., J.P. (Pro-Vice-Chancellor, Faculty of Law, University of Liverpool), Mr. J. Dallas Waters, C.B., D.S.O., J.P., D.L. (Chairman of the Cheshire County Quarter Sessions), Mr. Allen Beckett (President of the Warrington Law Society) and representatives of local professional societies.

The 73rd annual general meeting of the MONMOUTHSHIRE INCORPORATED LAW SOCIETY was held at the Law Library, Law Courts, Newport, on Friday, 28th April, 1961, when the following officers were elected: president, Mr. Victor R. Pugsley; vice-presidents, Mr. Arthur F. Dolman and Mr. Kenneth D. Treasure; honorary treasurer, Mr. J. Kenneth Wood; honorary librarian, Mr. J. Bernard Rogers; assistant librarian, Mr. T. Anthony Powles; honorary secretary, Mr. W. Pitt Lewis; members of the council, Mr. J. Bernard Rogers, ex-president; Messrs. R. Collis Bishop, J. Owen Davis, D. L. Davies, E. Glyn Evans, R. H. B. Francis, Gareth Griffiths, Roy M. Harmston, Norman G. Moses, H. R. P. Lloyd and D. P. Tomlin.

The WORSHIPFUL COMPANY OF SOLICITORS OF THE CITY OF LONDON held their annual livery dinner at the Mansion House on 24th April, the master, Mr. Arnold F. Steele, presiding. Alderman Sir Denys Lowson (Lord Mayor locum tenens) attended. The toast "The Law and the Lawyers" was proposed by Mr. Desmond Heap, LL.M., L.M.T.P.I., Comptroller and City Solicitor, and responded to by the Lord Chancellor.

At the monthly meetings of the Board of Directors of the SOLICITORS BENEVOLENT ASSOCIATION, held on 22nd February and 26th April, Mr. C. E. G. Mumby, M.A., of Northampton, and Mr. W. Gillham, of London, respectively were elected directors of the Association. At the April meeting 21 applications for relief were considered and grants totalling £3,277 2s. were made, £356 of which was in respect of "special" grants for holidays, clothing, etc. Of the 21 applications, 12 were for the renewal of grants to beneficiaries who were over the age of 80, and 3 were for young widows with families to maintain and educate. In considering the circumstances of new applicants for relief the view was expressed that there might be similar cases of hardship where the persons concerned were unaware of the existence of the Association but to whom a grant would bring a sense of security and relief so necessary to those in advancing years, and it was hoped that members would do their best to publicise locally the aims and objects of their own professional charity and the advantages of membership. Eight solicitors were admitted as members of the association, bringing the total membership up to 9,115. Forms of application for membership and general information leaflets will be supplied on request to the Association's offices, Clifford's Inn, Fleet Street, London, E.C.4. The minimum annual subscription is £1 1s. and a donation of £21 constitutes life membership.

The BARRISTERS' BENEVOLENT ASSOCIATION will hold their annual general meeting in the old Hall, Lincoln's Inn, on Wednesday, 10th May, at 4.45 p.m. The Right Hon. Lord Justice Upjohn will take the chair.

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Dorking.—PEARSON, COLE & SHORLAND, Surveyors, Valuers and Auctioneers. 279 High Street, Dorking. Tel. 3897/8. And at Reigate.

Dorking, Bookham and Effingham.—CUBITT AND WEST. Tel. Dorking 2212, Bookham 2744. Valuers, Surveyors, Estate Agents.

Dorking and Reigate.—A. R. & J. GASCOIGNE-PEES, F.A.L.P.A., Auctioneers, Estate Agents and Surveyors, 258/260 High Street, Dorking. Tel. 4071/2. 6 Church Street, Reigate. Tel. 4422/3. And at Leatherhead and Epsom.

Epsom and Leatherhead.—A. R. & J. GASCOIGNE-PEES, F.A.L.P.A., Auctioneers, Estate Agents and Surveyors, 21 High Street, Epsom. Tel. 4045/6. 4 Bridge Street, Leatherhead. Tel. 4133/4. And at Reigate and Dorking.

Esher.—EWBANK & CO., in association with Mann & Co. Est. 1891. Tel. 3537/8. Offices throughout West Surrey.

Esher.—W. J. BELL & SON, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 51 High Street. Tel. Esher 3551/2.

Ewell, Epsom, Leatherhead and adjoining areas.—DOUGLAS, F.A.L.P.A. 10 High Street, Epsom. Tel. 2362/4. (Four other offices.)

Ewell.—WILTSHIRES, Estate Agents, Surveyors, Auctioneers and Valuers, 55 High Street. Tel. Ewell 1665/6.

Farnham.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 4 Castle Street. Tel. 5724 (2 lines).

Farnham.—CUBITT & WEST. Tel. Farnham 5261. Valuers, Surveyors, Estate Agents.

SURREY (*continued*)

Farnham.—EGGAR & CO., incorporating Curtis & Watson, Surveyors, Auctioneers, Land & Estate Agents, 74 Castle Street. Tel. 6221/3. And at Alton and Basingstoke, Hants.

Farnham.—GERMAN, ADDY & CO. (Est. 1903). Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 111 West Street. Tel. 5283/4.

Farnham.—WHITEHEAD & WHITEHEAD, amal. HEWETT & LEE, 32 South Street, (Tel. 6277).

Godalming.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, Estate Offices. Tel. 1722 (5 lines).

Guildford.—MANN & CO., Est. 1891, 22 Epsom Road. Tel. 62911/2. Offices throughout West Surrey.

Guildford.—MESSENGER, MORGAN & MAY, Chartered Surveyors, 8 Quarry Street. Tel. 2992/4.

Guildford.—WHITEHEAD & WHITEHEAD, amal. HEWETT & LEE, 144 High Street. (Tel. 2811/2).

Haslemere.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 20 High Street. Tel. 1207.

Haslemere and Hindhead.—CUBITT & WEST. Tel. Haslemere 2345/6/7, Hindhead 63. Valuers, Surveyors, Estate Agents.

Kingston.—A. G. BONSOR, STEVENS & CO., Est. 1899, 82 Eden Street. Tel. KIN 0022.

Kingston.—NIGHTINGALE, PAGE & BENNETT, Est. 1825, Chartered Surveyors, 18 Eden Street. Tel. KIN 3356.

Kingston upon Thames and Area.—BENTALLS ESTATE OFFICES (L. J. Smith, F.A.L.P.A., P. F. Parkinson, B.Sc., A.A.L.P.A.), Wood St. KIN 1001. Sales, surveys, property and chattel valuations, lettings, management.

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Mitcham.—LEONARD DAVEY & HART, Chartered Surveyors, Auctioneers, Valuers and Estate Agents, Upper Green. Tel. MITcham 6101/2.

Oxshott.—W. J. BELL & SON, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 51 High Street, Esher. Tel. Esher 4331 (2 lines).

Redhill and Merstham.—E. H. BENNETT & PARTNERS, Auctioneers and Valuers. Tel. Redhill 3672. Merstham 2234/5.

Reigate.—MARTEN & CARNABY, Surveyors, Auctioneers and Valuers, 23 Church Street. Tel. 3361/2.

Reigate.—PEARSON, COLE & SHORLAND, Surveyors, Valuers and Auctioneers. 4 Bell Street, Reigate. Tel. 4371/2. And at Dorking.

Richmond.—ACLAND & CO., Estate Agents, Surveyors and Valuers. Rents collected. 27 Kew Road (Opposite Richmond Station). Tel. RIC 4811/2.

Richmond.—PENNINGTONS, 23 The Quadrant, Auctions, Valuations, Surveys. Rents collected. Tel. RIC 2255 (3 lines).

Sanderstead.—HOOKER & ROGERS, Railway Approach, Sanderstead. Manager, K. C. Fox, A.R.I.C.S. Tel. SAN 4414/5.

Surbiton.—E. W. Wallaker & CO., F.A.L.P.A., Surveyors, Valuers, Auctioneers and Estate Agents, 56/7 Victoria Road, Surbiton, Surrey. Tel. Elmbridge 5381/4, and at Chessington, Surrey, Shoreham-by-Sea and Lancing, Sussex. (Chartered Surveyor D. J. Peachey, F.R.I.C.S.)

Sutton.—DOUGLAS GRAHAM & CO., Estate Agents, Property Managers, 269 High Street. Tel. VIG 0026/7/8. And at Thornton Heath, Norbury and Piccadilly, W.1.

Sutton.—IDRIS JONES & PARTNERS, F.R.I.C.S., F.A.I., 22 The Arcade, Sutton. VIGilant 0182; and at 30 Abbey House, Westminster.

Thornton Heath.—LEONARD DAVEY & HART, Chartered Surveyors, Auctioneers, Valuers and Estate Agents, 781 London Road. Tel. THO 6211/2.

Thornton Heath.—DOUGLAS GRAHAM & CO., Estate Agents and Property Managers, 808 London Road. Tel. THO 3888 (4 lines). And at Norbury, Sutton and Piccadilly, W.1.

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Walton.—MANN & CO., Est. 1891, 38 High Street. Tel. 2331/2. Offices throughout West Surrey.

Walton and Weybridge.—HIGBY & CHARD (Consultants: George Geen, M.A., F.R.I.C.S., V. C. Lawrence, F.R.I.C.S.). 45 High Street, Walton-on-Thames. Tel. 20487/8.

Walton/Weybridge.—WARING & CO. Est. 1890. Surveyors, Estate Agents, Auctioneers and Valuers. Tel. Walton-on-Thames 24151/2.

West Byfleet.—MANN &CO., incorporating Ewbank and Co., Est. 1891. Tel. 3288/9. Offices throughout West Surrey.

Weybridge.—EWBANK & CO., in association with Mann and Co. Est. 1891. Tel. 2323/5. Offices throughout West Surrey.

Weybridge and District.—J. E. PURDIE & SON, Chartered Surveyors and Estate Agents, 1 and 3 Queens Road, Weybridge. Tel. 3307 (3 lines), and at Walton-on-Thames.

Weybridge and District.—WATERER & SONS, Chartered Auctioneers and Estate Agents, Surveyors, etc. Tel. 3838/9.

SURREY (*continued*)

Woking.—HOAR & SANDERSON, 5 Church Path. Tel. 3263/4. Eleven associated Surrey offices.

Woking.—MANN & CO., Est. 1891, Chartered Surveyor. Tel. 3800 (6 lines). Offices throughout West Surrey.

Woking.—MOLDRAM, CLARKE & EDGELEY, Chartered Surveyors. Tel. 3419; and at Guildford.

SUSSEX

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Arundel and Rustington.—HEASMAN & PARTNERS. Tel. Arundel 2323, Rustington 900.

Bexhill-on-Sea.—JOHN BRAY & SONS (Est. 1864), Estate Agents, Auctioneers and Valuers, 1 Devonshire Square. Tel. 14.

Bexhill-on-Sea and Cooden.—ERNEST SHEATHER, F.A.I., & PARTNER, Auctioneers and Estate Agents, 14 St. Leonards Road. Tel. 350, 351 and 2280.

Bexhill-on-Sea and Little Common.—RICHES & GRAY (Est. 1883), Chartered Auctioneers and Estate Agents, 25 Sea Road, Bexhill-on-Sea. Tel. 34/5. And at 25 Cooden Sea Road, Little Common. Tel. Cooden 2939.

Brighton.—RAYMOND BEAUMONT, F.R.I.C.S., F.A.I., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 35 East Street. Tel. Brighton 20163.

Brighton.—MELLOR & MELLOR, Chartered Auctioneers and Estate Agents, 110 St. James's Street. Tel. 682910.

Brighton and Worthing.—H. D. S. STILES & CO., F.R.I.C.S., F.A.I. (special rating diploma), 6 Pavilion Buildings. Tel. Brighton 23244 (4 lines). 10 King's Bench Walk, Temple, E.C.4. Tel. Central 5356. 3 The Steyne, Worthing. Tel. Worthing 9192/3.

Brighton.—FRANK STONE & PARTNERS, F.A.L.P.A., 84 Queen's Road. Tel. Brighton 29252/3.

Brighton and Hove.—WILLIAM WILLETT, LTD., Auctioneers and Estate Agents, 52 Church Road, Hove. Tel. Hove 34055. London Office, Sloane Square, S.W.1. Tel. Sloane 8141.

Brighton, Hove and Surrounding Districts.—MAURICE P. HATCHWELL, F.R.I.C.S., F.A.I., Chartered Surveyor, Chartered Auctioneer and Estate Agents, 4 Bartholomews, Brighton, 1. Tel. Brighton 23107.

Brighton and Hove and Surrounding Districts.—C. HORTON LEDGER, F.A.I., Established 1885, Chartered Auctioneer and Estate Agent, Surveyor and Valuer, "Sussex House," 126/7 Western Road, Hove, Tel. Sussex. 1291.

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Crawley.—WM. WOOD, SON & GARDNER, Estate Agents, Surveyors and Valuers. Tel. Crawley 1.

Crowborough.—DONALD BEALE & CO., Auctioneers, Surveyors and Valuers. The Broadway. Tel. Crowborough 3333.

Eastbourne.—FRANK H. BUDD, LTD., Auctioneers, Surveyors, Valuers, 1 Bolton Road. Tel. 1860.

Eastbourne.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 12 Gildredge Road. Tel. Eastbourne 1285.

Eastbourne.—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road Tel. Eastbourne 7840.

Eastbourne.—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897. Tel. 1234/5.

Eastbourne and District.—FARNHAM & CO., Auctioneers, Estate Agents and Valuers, 6 Terminus Road, Eastbourne. Tel. 4433/4/5. Branch at 87 Eastbourne Road, Lower Willingdon, and 4 Grand Parade, Polegate.

East Grinstead.—Messrs. P. J. MAY (P. J. May and A. L. Apthorp, F.R.I.C.S., F.A.I., M.R.San.I.), 2 London Road. Tel. East Grinstead 315/6.

East Grinstead.—TURNER, RUDGE & TURNER Chartered Surveyors. Tel. East Grinstead 700/1.

Hassocks and Mid-Sussex.—AYLING & STRUDWICK Chartered Surveyors. Tel. Hassocks 882/3.

Hastings, St. Leonards and East Sussex.—DYER & OVERTON (H. B. Dyer, D.S.O., F.R.I.C.S., F.A.I.; F. R. Hynard, F.R.I.C.S.). Consultant Chartered Surveyors. Estd. 1892. 6-7 Havelock Road, Hastings. Tel. 5661 (3 lines).

Hastings, St. Leonards and East Sussex.—WEST (Godfrey, F.R.I.C.S., F.A.I.) & HICKMAN, Surveyors and Valuers, 50 Havelock Road, Hastings. Tel. 6688/9.

Haywards Heath and District.—DAY & SONS, Auctioneers and Surveyors, 115 South Road. Tel. 1580. And at Brighton and Hove.

Haywards Heath and Mid-Sussex.—BRADLEY AND VAUGHAN, Chartered Auctioneers and Estate Agents. Tel. 91.

Horsham.—KING & CHASEMORE, Chartered Surveyors Auctioneers, Valuers, Land and Estate Agents. Tel Horsham 3355 (3 lines).

Horsham.—WELLER & CO., Surveyors, Auctioneers, Valuers, Estate Agents. Tel. Horsham 3311. And at Guildford, Cranleigh and Henfield.

Hove.—DAVID E. DOWLING, F.A.L.P.A., Auctioneer, Surveyor, Valuer & Estate Agent. 75 Church Road, Hove. Tel. Hove 37213 (3 lines).

(*Continued on p. xxiii*)

REGISTER OF

Auctioneers, Valuers, Surveyors, Land and Estate Agents

SUSSEX (*continued*)

Hove.—PARSONS SON & BASLEY (W. R. De Silva, F.R.I.C.S., F.A.I.), 173 Church Road, Hove. Tel. 34564.

Hove and District.—WHITLOCK & HEAPS, Incorporated Auctioneers, Estate Agents, Surveyors and Valuers, 65 Sackville Road. Tel. Hove 31822.

Hove, Portslade, Southwick.—DEACON & CO., 11 Station Road, Portslade. Tel. Hove 48440.

Lancing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

Lewes and Mid-Sussex.—CLIFFORD DANN, B.Sc., F.R.I.C.S., F.A.I., Fitzroy House, Lewes. Tel. 750. And at Ditchling and Hurstpierpoint.

Seaford.—W. G. F. SWAYNE, F.A.I., Chartered Auctioneer and Estate Agent, Surveyor and Valuer, 3 Clinton Place. Tel. 2144.

Storrington, Pulborough and Billinghurst.—WHITEHEAD & WHITEHEAD amal. with D. Ross & Son, The Square, Storrington (Tel. 40), Swan Corner, Pulborough (Tel. 232/3), High Street, Billinghurst (Tel. 391).

Sussex and Adjoining Counties.—JARVIS & CO., Haywards Heath. Tel. 700 (3 lines).

West Worthing and Goring-by-Sea.—GLOVER & CARTER, F.A.L.P.A., 110 George V Avenue, West Worthing. Tel. 8686/7. And at 6 Montague Place, Worthing. Tel. 6264/5.

Worthing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

Worthing.—EYDMANN, STREET & BRIDGE (Est. 1864), 14 Chapel Road. Tel. 4060.

Worthing.—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.

Worthing.—PATCHING & CO., Est. over a century. Tel. 5000. 5 Chapel Road.

Worthing.—JOHN D. SYMONDS & CO., Chartered Surveyors, Revenue Buildings, Chapel Road. Tel. Worthing 623/4.

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Birmingham and District.—SHAW, GILBERT & CO., F.A.I., "Newton Chambers," 43 Cannon Street, Birmingham, 2. Midland 4784 (4 lines).

Coventry.—GEORGE LOVEITT & SONS (Est. 1843), Auctioneers, Valuers and Estate Agents, 29 Warwick Row. Tel. 3081/2/3/4.

WARWICKSHIRE (*continued*)

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Rugby and District.—WIGGINS & RUSSELL, Auctioneers, etc., 14 Regent Place, Rugby (Tel. 2548).

Sutton Coldfield.—QUANTRILL SMITH & CO., 4 and 6 High Street. Tel. SUT 4481 (5 lines).

WESTMORLAND

Kendal.—MICHAEL C. L. HODGSON, Auctioneers and Valuers, 10a Highgate. Tel. 1375.

Windermere.—PROCTER & BIRKBECK (Est. 1841), Auctioneers, Lake Road. Tel. 688.

WILTSHIRE

Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents, Special Probate Department. New Bond Street Chambers. 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.

Marlborough Area (Wilts, Berks and Hants Borders). JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers, Estate Offices. Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2. And at Ashby-de-la-Zouch, Burton-on-Trent and Derby.

WORCESTERSHIRE

Kidderminster.—CATTELL & YOUNG, 31 Worcester Street. Tel. 3075 and 3077. And also at Droitwich Spa and Tenbury Wells.

Kidderminster, Droitwich, Worcester.—G. HERBERT BANKS, 28 Worcester Street, Kidderminster. Tels. 2911/2 and 4210. The Estate Office, Droitwich. Tels. 2084/5. 3 Shaw Street, Worcester. Tels. 27785/6.

Worcester.—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street, Tel. 5194/5.

YORKSHIRE

Bradford.—NORMAN R. GEE & HEATON, 72/74 Market Street, Chartered Auctioneers and Estate Agents. Tel. 27202 (2 lines). And at Keighley.

YORKSHIRE (*continued*)

Bradford.—DAVID WATERHOUSE & NEPHEWS, F.A.I., Britannia House, Chartered Auctioneers and Estate Agents. Est. 1844. Tel. 22622 (3 lines).

Hull.—EXLEY & SON, F.A.L.P.A. (Incorporating Officer and Field), Valuers, Estate Agents, 70 George Street. Tel. 3399/2.

Leeds.—SPENCER, SON & GILPIN, Chartered Surveyors, 132 Albion Street, Leeds, 1. Tel. 30171.

Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.

Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

SOUTH WALES

Cardiff.—DONALD ANSTEE & CO., Chartered Surveyors, Auctioneers and Estate Agents, 91 St. Mary Street, Tel. 30429.

Cardiff.—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.

Cardiff.—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.

Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

NORTH WALES

Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

Classified Advertisements

PUBLIC NOTICES—INFORMATION REQUIRED—CHANGE OF NAME
4s. per line as printed

APPOINTMENTS VACANT—APPOINTMENTS WANTED—PRACTICES AND PARTNERSHIPS and all other headings
15s. for 30 words. Additional lines 4s. Box Registration Fee 2s. extra

Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHAncery 6855

PUBLIC NOTICES

METROPOLITAN BOROUGH OF WANDSWORTH

ASSISTANT SOLICITOR

Applications invited for this established post within Grade A.P.T. III–IV (£1,005–£1,355).

The appointment is very suitable to a solicitor who seeks to obtain wide experience with a local authority and particularly a metropolitan borough council.

Applications on forms obtainable from this office must reach me by 18th May, 1961.

J. NOEL MARTIN,
Town Clerk.

Municipal Buildings,
Wandsworth, S.W.18.

SHEFFIELD REGIONAL HOSPITAL BOARD

CONVEYANCING ASSISTANT required. General Administrative Grade, Salary £780–£1,200 (at present under review).

Candidates must be able to carry through conveyancing and allied transactions with minimum of supervision.

Application form and further information from :—

" The Secretary,
Sheffield Regional Hospital Board,
Fulwood House,
Old Fulwood Road,
Sheffield, 10."

Closing date for receipt of applications 20th May, 1961.

BOROUGH OF BEDFORD

LAW CLERK

Salary within A.P.T. III–IV (£960–£1,310) according to experience. Local government experience not essential. Housing accommodation and part removal expenses. Closing date for applications, 18th May, 1961.

Further particulars from Town Clerk, Town Hall, Bedford.

ROYAL BOROUGH OF NEW WINDSOR

JUNIOR LEGAL ASSISTANT (Assistant Conveyancing Clerk) required in Town Clerk's office. Salary within range (£645–£815). Previous local government experience is not essential but preference will be given to a person having some experience as a Solicitor's Clerk.

Although the duties of the post will consist primarily of conveyancing the successful applicant will be given every opportunity to gain experience of the work of a local authority legal department, and the National Conditions of Service provide for financial assistance to be given towards the cost of preparing for recognised examinations.

Applications quoting reference " A," and stating age, qualifications and experience together with the names of two referees to be sent to me by not later than noon on the 26th May, 1961.

G. N. WALDRAM,
Town Clerk.

Kipling Memorial Building,
Windsor,
Berks.

CITY OF BIRMINGHAM

CONVEYANCING CLERK

Applications are invited for the appointment of Conveyancing Clerk in the Town Clerk's Office at salary in accordance with Grade A.P.T. IV (£1,140–£1,310 per annum).

Candidates must have good conveyancing experience and previous local government experience is not essential. Five-day week. Post pensionable. Medical examination.

Applications, with full particulars and copies of three testimonials, to Town Clerk, Council House, Birmingham, 1, not later than 26th May, 1961.

T. H. PARKINSON,
Town Clerk.

SURREY COUNTY COUNCIL

ASSISTANT SOLICITORS

Applications are invited for the appointments of :—

(i) SECOND ASSISTANT SOLICITOR within Scale E (£1,860–£2,120).

This appointment affords an opportunity to gain valuable administrative and legal experience in Town Planning, Education, Social Service and committee work.

(ii) ASSISTANT SOLICITOR within Scale B (£1,425–£1,670)

for general legal work and, if desired, some administrative and committee experience. Local government experience not essential.

Applications, giving full particulars of age, education, qualifications and experience and the names of two referees to the undersigned by 19th May.

W. W. RUFF,
Clerk of the Council.

County Hall,
Kingston-upon-Thames.

APPOINTMENTS VACANT

CONVEYANCING and Probate Assistant, admitted or unadmitted, for Chester General Practice : good salary for right applicant. State age, experience and Salary required.—Box 7693, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Managing Clerk required by City Solicitors for branch office in Croydon area. Progressive salary commencing at £1,300 or by negotiation ; accommodation available.—Box 7694, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

IT WILL be a miracle if anyone is interested in this vacancy. For a Managing Clerk, preferably about 25 to 40 years of age, with all-round experience, and capable of accepting responsibility. The office is a small one ; sole principal, no other male staff. Country town in pleasant area, easy access London (50 miles). Reasonable arrangements would be made for housing, and Pension Scheme. At present eight-day week, but conditions may improve. Would only suit hard working type with experience, but younger man willing to have a go could do worse than try. Salary would be realistic, and progressive.—Box 7695, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END Solicitors require capable and energetic Conveyancing and Managing Clerk. No Saturdays. Salary by arrangement but up to £1,500 per annum for right man.—Box 7696, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR TO LEADING FINANCE HOUSE

requires

LITIGATION CLERK

Applicants should have good knowledge of Hire Purchase within the Acts and also be familiar with the Practice in the County Court. The position affords excellent prospects and opportunities to successful applicant. Salary by arrangement.

Please apply giving concise details to :—

Personnel Department (Ref. : 13/218)
TRICITY FINANCE CORPORATION LIMITED,
Great Cambridge Road, Enfield, Middx.

WILLESDEN.—Urgently require young conveyancing clerk or newly qualified solicitor to assist in expanding practice. Good prospects and salary.—Box 7560, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CARDIFF Solicitors with large and expanding practice require experienced unadmitted Common Law Clerk, capable of handling substantial volume of work, particularly trade union work. Commencing salary up to £1,500 per annum. Excellent opportunity for advancement. Assistance with housing and car if required.—Box 7699, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PORTSMOUTH Solicitors require Litigation Clerk mostly divorce. Good opening for right man. Salary by arrangement.—Box 7700, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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LEADING Insurance Company has a vacancy for a MALE CLERK not over 35 years of age with some Legal experience for their Life Department in the City of London. Very good prospects of advancement—salary by way of merit and responsibility. Non-contributory Pension and other Staff Welfare Schemes. Write in confidence, giving full details of personal and business experience to Box 7701, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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★ Classified Advertisements ★

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APPOINTMENTS VACANT—*continued*

WEST SUSSEX SOLICITORS. Busy general practice. Energetic Solicitor required. Definite opportunity of partnership within one year if mutually suited.—Box 7698, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4.

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